

EXHIBIT S

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
No.: 1:20-CV-05441 (KPF)(KWL)

UNIFORMED FIRE OFFICERS)
ASSOCIATION, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
BILL de BLASIO, et al.,)
)
 Defendants.)
_____)

REMOTE VIDEOTAPED DEPOSITION OF
LAURA MELLO
Friday, August 7, 2020

REPORTED BY:

RHONDA HALL-BREUWET, RDR, CRR, LCR, CCR, FPR

JOB NO. 28094

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August 7, 2020

9:31 a.m.

Videotaped Deposition of LAURA MELLO,
held remotely before Rhonda Hall-Breuwet,
Registered Diplomate Reporter, Certified
Realtime Reporter, Licensed Court Reporter
(TN), Certified Court Reporter (GA and LA),
Florida Professional Reporter, and Notary
Public of the State of Florida.

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(Continued)

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17 GABRIELA ALVAREZ

18
19 VIDEOGRAPHER:

20 JEREMY LeMASTER

I N D E X

PAGE

DIRECT EXAMINATION BY MR. NORTH 9

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
EXHIBIT 1	Citywide Privacy Protection Policies and Protocols, dated 1/28/19, Bates-stamped DEF_UFOA_001944 - 1981	27
EXHIBIT 2	Opinion of the Committee on Open Government, FOIL AO 19775, dated 7/27/20	67
EXHIBIT 3	Letter from Rebecca G. Quinn and Dominique Saint-Fort to Judge Failla dated 7/25/20	80

1 LAURA MELLO

2 THE VIDEOGRAPHER: Okay. Good
3 morning. We are now on the record.

4 Today's date is August 7th, 2020, and the
5 time is 9:31 a.m. Eastern Standard Time.

6 This is the video deposition of
7 Laura Mello in the matter of Uniformed Fire
8 Officers Association, et al., versus Bill
9 de Blasio, et al., filed in the United
10 States District Court, Southern District of
11 New York, Case
12 Number 1:20-cv-05441-KPF-RWL.

13 This deposition is taking place
14 via web videoconference with all
15 participants attending remotely due to the
16 COVID-19 pandemic.

17 My name is Jeremy LeMaster. I am
18 the videographer representing TransPerfect,
19 and the document tech is Gabriela Alvarez.

20 Would counsel on the conference
21 please identify yourselves and state whom
22 you represent, beginning with the
23 questioning attorney.

24 MR. NORTH: Good morning. This is
25 Evan North from the law firm of DLA Piper.

1 LAURA MELLO

2 I'm here on behalf of the plaintiffs. I'm
3 joined on the phone today by Anthony Coles,
4 also of DLA Piper.

5 MS. SAINT-FORT: Good morning,
6 everyone. My name is Dominique Saint-Fort.
7 I'm assistant corporation counsel for the
8 New York City Law Department Office of
9 Corporation Counsel, representing
10 defendants. I'm here with Rebecca Quinn
11 and Lynelle Maginley-Liddie, who is counsel
12 for the Department of Correction.

13 THE VIDEOGRAPHER: Thank you,
14 Counsel. Our court reporter today is
15 Rhonda Hall-Breuwet representing
16 TransPerfect. The court reporter will now
17 swear in the witness.

18 CERTIFIED STENOGRAPHER: Raise
19 your right hand, please.

20 Do you solemnly swear the
21 testimony you are about to give will be the
22 truth, the whole truth, and nothing but the
23 truth?

24 THE WITNESS: Yes.

25 CERTIFIED STENOGRAPHER: You're

1 LAURA MELLO

2 good. Thank you.

3 LAURA MELLO

4 acknowledged having been duly sworn to tell
5 the truth and testified upon her oath as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. NORTH:

9 Q Good morning, Ms. Mello. Can you
10 please state your full name for the record and
11 spell it.

12 A Good morning. My name is Laura,
13 L-a-u-r-a; Mello, M-e-l-l-o.

14 Q Great. Thank you.

15 I just want to go over a few
16 ground rules up front, but can you tell me
17 first if you've ever been deposed before?

18 A I have.

19 Q Okay. So are you generally
20 familiar with how depositions work, at least
21 when you're in person?

22 A Generally.

23 Q Okay. And you understand that
24 you're testifying under oath today?

25 A Yes.

1 LAURA MELLO

2 Q And if you don't understand a
3 question, just let me know, please, and I'll
4 try to rephrase it. But can we agree that if
5 I ask a question and you don't let me know
6 that it was confusing, that you understood the
7 question as I posed it?

8 A Yes.

9 Q And there's obviously a court
10 reporter joining us today, as well as a
11 videographer, who is recording this. So I'd
12 just ask that you please speak up and speak
13 slowly so that we capture everything that you
14 say.

15 A Yes.

16 Q And this will be a fairly quick
17 deposition as they go, but just let me know if
18 you need to take a break at any point, and
19 it's no problem. I just ask that we not take
20 a break while a question is pending.

21 Does that work?

22 A Yes.

23 Q Great.

24 Are you currently employed?

25 A Yes, I am.

1 LAURA MELLO

2 Q By whom?

3 A The New York City Department of
4 Correction.

5 Q How long have you been employed by
6 the New York City Department of Correction?

7 A Almost seven years.

8 Q Okay. What is your current
9 position?

10 A I am senior counsel and FOIL
11 officer.

12 Q How long have you held that
13 position?

14 A Almost seven years.

15 Q Can you please describe the
16 general nature of your job responsibilities.

17 A As FOIL officer, I head up a small
18 FOIL unit that handles FOIL requests and
19 responses. As senior counsel, I work
20 generally on a number of policy legislative
21 issues -- and legislative issues as well as
22 limited . . .

23 Q I'm sorry. I may not have heard
24 the last part of that sentence. As well as
25 limited?

1 LAURA MELLO

2 A Litigation.

3 Q Did you say something after that?

4 Oh, litigation?

5 A Litigation, yes.

6 Q Thank you.

7 And did you previously hold a
8 different position with the Department of
9 Correction?

10 A No.

11 Q Okay. Are you here today to
12 testify on behalf of the Department of
13 Correction?

14 A Yes.

15 Q And if I refer to the department
16 generally in this deposition, can we agree
17 that I'm referring to the Department of
18 Correction?

19 A Yes.

20 Q And do you understand that you're
21 not here to testify as to your personal
22 opinions and beliefs but, rather, on behalf of
23 the department as a designated representative?

24 A Yes.

25 Q Are you prepared today to testify

1 LAURA MELLO

2 regarding policies and practices for handling
3 FOIL requests and the privacy of personnel
4 records?

5 A Yes.

6 Q Have you been trained with regard
7 to FOIL by the department?

8 A I was given guidance by the deputy
9 general counsel at the time I began my
10 position.

11 Q Can you describe that guidance for
12 me, please.

13 A The guidance was in person and
14 verbal, and she was available when I had
15 questions.

16 Q And have you received any ongoing
17 training or support with regard to FOIL in
18 your position?

19 A No.

20 Q What did you do to prepare for
21 today's deposition?

22 A I spoke with the attorney --
23 attorneys representing the department and the
24 City.

25 Q And did you speak with anyone

1 LAURA MELLO

2 else?

3 A No.

4 Q Did you review any documents?

5 A No.

6 Q And do you understand that it's
7 your responsibility today to answer questions
8 based on the collective knowledge of the
9 department on this topic?

10 A To the extent -- yes.

11 Q Yes?

12 A Yes.

13 Q Are you prepared to do that?

14 A Yes.

15 Q And do you understand that it's
16 your responsibility to testify as to any
17 relevant information known or available to the
18 department to the extent that information is
19 relevant to the topic that we discussed?

20 MS. SAINT-FORT: Objection. Form.
21 You can answer.

22 THE WITNESS: I understand that it
23 is my obligation to testify to the extent I
24 am knowledgeable and aware.

25 ///

1 LAURA MELLO

2 BY MR. NORTH:

3 Q And I think you said a moment ago
4 that you spoke with attorneys to prepare for
5 this deposition, and I just want to confirm
6 that you are prepared to testify on behalf of
7 the department based upon the department's
8 knowledge and not just your own knowledge.

9 Is that fair to say?

10 A I don't understand.

11 Q I'm happy to rephrase. This is a
12 30(b)(6) deposition. You're here on behalf of
13 the department to testify on behalf of the
14 department, and I just want to confirm that
15 you are prepared to testify on behalf of the
16 department based upon the department's
17 knowledge about this topic and not just your
18 own personal knowledge.

19 A Yes.

20 Q Okay. Thank you.

21 So today I'd like to ask questions
22 about two general time periods with June 12th,
23 2020, as the dividing line. We'll first
24 discuss the period prior to June 12th.

25 Can you tell me first what written

1 LAURA MELLO

2 policies or rules the employees of the FOIL
3 department -- the FOIL team that you work with
4 follow in reviewing and responding to FOIL
5 requests?

6 A They proceed on guidance that I
7 give in person or over the phone verbally.

8 Q Are there any written documents
9 that those employees use to guide them in
10 responding to FOIL requests?

11 A They use the written FOIL law.

12 Q Did they use anything else?

13 A No.

14 Q Are there any written policies or
15 written guidance at the department that
16 provide support to FOIL employees in
17 determining how to apply the FOIL law?

18 A No.

19 MS. SAINT-FORT: Objection to
20 form.

21 You can answer.

22 THE WITNESS: No.

23 BY MR. NORTH:

24 Q What kind of training have you
25 given the employees in your unit on the proper

1 LAURA MELLO

2 application of FOIL?

3 A Give consistent, constant ongoing
4 training verbally, whether in person or over
5 the phone.

6 Q And can you describe the nature of
7 that training.

8 A We frequently review the process
9 for processing the incoming FOIL requests and
10 the nature of the FOIL exemptions and guidance
11 as to redaction or withholding on the basis of
12 those exemptions where applicable.

13 Q Okay. So you mentioned a few
14 things there. I just want to go through them
15 one by one.

16 When you review the process for
17 processing incoming FOIL requests with your
18 team, can you please describe that process to
19 me and how it works.

20 A So the process for the FOIL --
21 incoming FOILs, we receive the FOIL request.
22 The FOIL request is lodged in our database,
23 and the request is reviewed to ensure that it
24 reasonably describes the records and that it
25 is requesting records that are possessed or

1 LAURA MELLO

2 maintained by the department.

3 We then -- we also ensure that if
4 the request is for records that relate to a
5 person other than the requester that the
6 request is accompanied by a notarized
7 authorization signed by the person the records
8 relate to, that that person authorizes their
9 release.

10 Then an acknowledgment letter is
11 generated to the requester. Then internal --
12 assuming the department can understand the
13 request and that it reasonably describes the
14 records sought and that the department is in
15 possession of the records, internal requests
16 to the appropriate division or units is
17 generated.

18 When the records are received by
19 the FOIL unit, they are reviewed for
20 responsiveness, completeness, and for any
21 potential FOIL exemptions. Then redactions
22 are applied, and a final review is conducted.
23 A response letter is generated, and the
24 response is provided.

25 Q You mentioned the application of

1 LAURA MELLO
2 potential FOIL exemptions. Can you explain to
3 me in a little bit more detail how that
4 process works.

5 MS. SAINT-FORT: Objection to
6 form.

7 You can answer.

8 THE WITNESS: The documents are
9 reviewed for any information that may be
10 withheld or must be withheld by the
11 department as outlined in the FOIL law.
12 And if the records requested or portions of
13 those records fall under those exemptions,
14 then that information is withheld by
15 redaction or the entirety of the document.

16 BY MR. NORTH:

17 Q And just so I understand, the
18 process that you just described, you described
19 that in the context of my question about how
20 you trained your employees, but I want to
21 understand, is that process that you laid out
22 in a written policy maintained by the
23 department or used by the department but
24 maintained by the City, or is it just a part
25 of your training to your employees?

1 LAURA MELLO

2 A It is part of the training.

3 Q Okay.

4 A In --

5 Q I'm sorry. I didn't mean to cut
6 you off, if I did.

7 A No, that's -- that's all.

8 Q Okay. And have you revised this
9 instruction or training in your seven years at
10 the Department of Correction, or has it
11 changed at all during that span?

12 A It has changed only to the extent
13 that additional guidance or laws have been
14 passed that are relevant to the FOIL law.
15 Then that is modified accordingly.

16 Q When you refer to additional
17 guidance, what is the source of that guidance?

18 A The source of that guidance would
19 be from legislation that has passed or from
20 guidance from the law department regarding
21 such passing or revision.

22 Q So is it fair to say that you keep
23 abreast of changes in litigation [sic] and
24 update your training accordingly?

25 A Yes.

1 LAURA MELLO

2 MS. SAINT-FORT: Objection to
3 form.

4 BY MR. NORTH:

5 Q I see that it says "litigation" on
6 the realtime; but if I said that, I was
7 mistaken. I meant to say "legislation."

8 Can you tell me a little bit more
9 about the guidance that you receive from the
10 law department about the proper application of
11 FOIL.

12 MS. SAINT-FORT: Objection to
13 form. I'm going to instruct the witness
14 not to answer to the extent that your
15 answer would infringe on privileged
16 communications.

17 THE WITNESS: Those are -- that
18 reflects privileged communication.

19 BY MR. NORTH:

20 Q Do you receive guidance from any
21 other sources besides the law department for
22 your review of new legislation in the FOIL
23 area?

24 A I periodically review information
25 on the Committee on Open Government website.

1 LAURA MELLO

2 Q What is your understanding of the
3 role of the Committee on Open Government?

4 A The Committee on Open Government
5 issues advisory opinions on FOIL-related
6 issues.

7 Q And when you periodically review
8 the Committee on Open Government website, does
9 that review include the review of advisory
10 opinions?

11 A It may.

12 Q Has it in the past?

13 A Yes.

14 Q And how do you use the advisory
15 opinions issued by the Committee on Open
16 Government in determining the proper
17 application of FOIL to requests received by
18 the department?

19 A I view the -- I'm sorry. Could
20 you repeat the question?

21 Q Sure.

22 How do you use the advisory
23 opinions issued by the Committee on Open
24 Government in determining the proper
25 application of FOIL to requests received by

1 LAURA MELLO

2 the department?

3 A I use the advisory opinions as
4 guidance, other information they may provide
5 as guidance. I do not use them as binding but
6 as instructive.

7 Q Is it fair to say that they have,
8 in legal speak, persuasive authority as
9 opposed to binding authority?

10 MS. SAINT-FORT: Objection. Form.
11 You can answer.

12 THE WITNESS: They can be
13 persuasive.

14 BY MR. NORTH:

15 Q Is there anything else that guides
16 how the department responds to FOIL requests?

17 A No.

18 Q Are there any policies used by
19 other City agencies regarding FOIL that the
20 department uses to guide its discretion in
21 responding to FOIL requests?

22 A No.

23 Q Are there any citywide policies
24 issued by the City of New York pertaining to
25 the disclosure of information to third parties

1 LAURA MELLO

2 that the department uses in responding to FOIL
3 requests?

4 A No.

5 Q How does the department ensure
6 that its treatment of FOIL requests is
7 consistently applied from one request to the
8 next?

9 MS. SAINT-FORT: Objection to
10 form.

11 You can answer.

12 THE WITNESS: We build on -- we
13 understand how requests have been responded
14 to, and we are able to reference previous
15 requests in our database, and generally we
16 are able to apply consistent responses to
17 the same types of requests based on
18 those -- based on those records.

19 BY MR. NORTH:

20 Q So is it a common part of your
21 practice, in responding to FOIL requests, to
22 review previous requests and the department's
23 responses to those requests to determine how
24 to respond to the new requests?

25 A Yes.

1 LAURA MELLO

2 MS. SAINT-FORT: Objection to
3 form.

4 BY MR. NORTH:

5 Q And you mentioned that the
6 previous requests are stored in a database; is
7 that correct?

8 A Yes.

9 Q And you also testified that you're
10 able to retrieve previous requests and
11 responses from those databases -- from that
12 database; is that correct?

13 A Yes.

14 Q How are you able to search that
15 database for previous requests and responses?

16 A We can search by subject of the
17 FOIL. We can search by the requester name.
18 We can search by the name of the individual
19 whose records are being requested. We can
20 search by attorney name if it's been -- or
21 firm if it's been submitted by an attorney or
22 a firm.

23 Q Are you able to search by
24 whether -- are you able to search according to
25 the disposition of the request?

1 LAURA MELLO

2 MS. SAINT-FORT: Objection.

3 You can answer.

4 BY MR. NORTH:

5 Q I'm sorry. You cut out for a
6 second there. Was that a yes or no?

7 A No.

8 Q Thank you.

9 So of the different things that
10 you can search by that you just described,
11 which one of those functions would you
12 typically use to pull up relevant previous
13 requests to inform your disposition on a new
14 request?

15 MS. SAINT-FORT: Objection to
16 form.

17 You can answer.

18 THE WITNESS: The subject of the
19 request.

20 BY MR. NORTH:

21 Q What is the subject of the
22 request? Can you give me an example of the
23 subject of the request?

24 A An example would be inmate file.

25 Q So if you received a new request

1 LAURA MELLO

2 for a specific inmate's file, you could look
3 up that new inmate -- you could look up that
4 inmate's name and see if there are previous
5 requests for that inmate file using a name, or
6 you could also search for previous requests
7 for other inmate files using that as the
8 subject? Do I have that right?

9 A Yes.

10 Q Would member of service
11 disciplinary records be another subject that
12 you could search for?

13 A Disciplinary records is a subject
14 we can search for.

15 Q Let's take a look at a document.

16 MR. NORTH: Matt, if you can pull
17 up Tab 26, please.

18 (Exhibit Number 1, Citywide
19 Privacy Protection Policies and
20 Protocols, dated 1/28/19,
21 Bates-stamped DEF_UFOA_001944 -
22 1981, was marked for
23 identification.)

24 BY MR. NORTH:

25 Q And Ms. Mello, this should appear

1 LAURA MELLO

2 on your screen automatically in just a few
3 moments, but while he pulls it up, I'm going
4 to be showing you a document called "Citywide
5 Privacy Protection Policies and Protocols."

6 A Yes.

7 Q Do you see it?

8 A Yes, I do.

9 Q Are you familiar with this
10 document?

11 A Yes, I am.

12 Q How are you familiar with it?

13 A I am the department's agency
14 privacy officer.

15 Q And in that capacity, do you
16 interact with the City's chief privacy
17 officer?

18 A Yes, I do.

19 Q Do you routinely use this document
20 in your capacity as the privacy officer for
21 the department?

22 A Yes, I do.

23 MR. NORTH: If we can scroll
24 down -- there's some numbering at the
25 bottom -- to page 1954.

1 LAURA MELLO

2 BY MR. NORTH:

3 Q There's a highlighted
4 Section 1.5.5 entitled "Model Protocols for
5 Handling Third-Party Requests for Information
6 Held by City Agencies."

7 A Yes.

8 Q And you see where it says "City
9 agencies should follow the Model Protocols for
10 Handling Third-Party Requests for information
11 Held by City Agencies, issued as City policy
12 in April 2017 by the First Deputy Mayor."

13 A Yes.

14 Q "The Model Protocols set forth a
15 factual and legal assessment process which
16 agencies must follow when handling a request
17 from a third party for City information,
18 including but not limited to identifying
19 information. Agencies must either adopt the
20 Model Protocols in their entirety, or develop
21 and adopt a comparable protocol."

22 A Yes.

23 Q Has the department adopted the
24 model protocols?

25 A Yes.

1 LAURA MELLO

2 Q And do the model protocols govern
3 the department's handling of FOIL requests?

4 A It could be considered a broad
5 guidance.

6 Q Do you use the model protocols in
7 determining how to respond to FOIL requests?

8 A To the extent -- I'm sorry. Could
9 you repeat the question? I got distracted for
10 a second.

11 Q No problem.
12 Do you use the model protocols in
13 determining how to respond to FOIL requests?

14 A As a broad guidance.

15 Q Would you characterize this as one
16 of the written policies that you use to
17 broadly guide your response to FOIL requests?

18 MS. SAINT-FORT: Objection to
19 form.

20 You can answer.

21 THE WITNESS: Yes. We -- that --
22 that's accurate.

23 BY MR. NORTH:

24 Q This provision -- not of the model
25 protocols but the document on your screen --

1 LAURA MELLO

2 references that the model protocols set forth
3 the factual and legal assessment process for
4 agencies to follow. Can you please describe
5 for me generally what that factual and legal
6 assessment process involves.

7 A It basically --

8 CERTIFIED STENOGRAPHER: I'm
9 sorry. Did you cut out?

10 THE WITNESS: No. No. There was
11 some static.

12 MS. SAINT-FORT: Did you hear the
13 question, Laura? Do you need it repeated?

14 THE WITNESS: I did hear it, yeah.

15 I know that we -- our process
16 follows this guidance. I have not recently
17 reviewed the model protocol specifically.
18 So I don't want to misstate the actual
19 steps listed, but our steps are consistent
20 with it.

21 BY MR. NORTH:

22 Q Since we don't have the document
23 here, can you provide any more detail on what
24 that factual and legal assessment process
25 entails?

1 LAURA MELLO

2 A We ensure that the requester has
3 a -- so the department advises the individual
4 that all requests -- third-party requests for
5 information must go through the legal division
6 and specifically the FOIL officer. The FOIL
7 officer must be aware of all these requests.
8 And then that's where the information is
9 reviewed. The request is reviewed, and the
10 request is assessed to ensure that it is
11 properly disclosable and that disclosure does
12 not violate any laws related to identifying
13 information.

14 Q And does that process involve the
15 application of particular FOIL exemptions to a
16 request for information?

17 A It may.

18 Q And when you mention identifying
19 information, can you please describe what you
20 mean by that.

21 A Identifying information is
22 generally information sometimes called
23 "personally identifying information" that can
24 be used individually or in -- together,
25 multiple pieces of identifying information to

1 LAURA MELLO

2 identify an individual, such as name, birth
3 date, address.

4 Q And aside from personal
5 identifying information, do the model
6 protocols govern the treatment of other
7 information where disclosure of that
8 information could constitute an unwarranted
9 invasion of privacy?

10 A Yes.

11 Q Can you please describe what the
12 model protocols say in that regard.

13 A The -- like I said, I haven't
14 recently reviewed the model protocols
15 specifically except to ensure that our
16 handling of information is consistent with
17 them, handling of requests for information.

18 We ensure either that the
19 person -- that the information requested is
20 public, already publicly available, or maybe
21 publicly disclosed because it is publicly
22 available elsewhere. And if it is not
23 publicly available, then we review that
24 request to ensure that information is not
25 disclosed to -- in an unwarranted way; that

1 LAURA MELLO

2 the requester has the right and the authority
3 to request and receive the information. We
4 also make sure that it doesn't violate any
5 legal requirements to keep the information
6 confidential.

7 Q And when you speak of legal
8 requirements to keep the information
9 confidential, do you have particular legal
10 requirements in mind?

11 A For example, we don't disclose
12 social security numbers, to the extent that we
13 possess them.

14 Q Are there other legal requirements
15 that you have in mind that don't relate to
16 personally identifiable information?

17 A We're talking prior to -- before
18 50-a was repealed, that was one limitation
19 about disciplinary records.

20 Q And do you have anything else in
21 mind?

22 A At the moment, no.

23 Q And, again, recognizing that you
24 don't have the document in front of you and
25 you say you haven't referenced it recently,

1 LAURA MELLO

2 can you describe for me whether the model
3 protocols require the individual assessment of
4 records prior to their release to determine
5 whether disclosure is appropriate.

6 A Each request would be on a
7 case-by-case basis, handled on a case-by-case
8 basis.

9 Q Do you consider whether disclosure
10 is appropriate on a record-by-record basis?

11 MS. SAINT-FORT: Objection to
12 form.

13 You can answer.

14 THE WITNESS: If the request -- if
15 the response to a request entailed multiple
16 records, yes.

17 BY MR. NORTH:

18 Q So would you perform a
19 file-by-file review of each of the records
20 encompassed by a single request?

21 A Yes.

22 Q And is that required by the model
23 protocols?

24 A I don't recall.

25 Q But it's fair to say that that is

1 LAURA MELLO

2 the common practice at the Department of
3 Correction?

4 A Yes.

5 Q At the outset, you mentioned that
6 you have a small FOIL unit. Can you tell me
7 how many employees of the department are
8 responsible in some way for reviewing and
9 responding to FOIL requests?

10 A There are two full-time legal
11 assistants and one part-time legal assistant
12 who work on FOIL requests. Other attorneys in
13 the legal division may assist in the process
14 on an as-needed basis.

15 Q Has your staffing gone up or down
16 in this area over the past five years?

17 MS. SAINT-FORT: Objection to
18 form.

19 You can answer.

20 THE WITNESS: No. I -- let me
21 clarify. We had this setup. One full-time
22 legal assistant left; so it went down. But
23 then another legal assistant was added; so
24 it went back up. It has not gone up from
25 that in that time period.

1 LAURA MELLO

2 BY MR. NORTH:

3 Q Okay. Thank you for clarifying.

4 You mentioned before and we've
5 discussed the specific exemptions to
6 disclosure under FOIL, and I would just like
7 to go through those one by one.

8 In general when responding to a
9 FOIL request, does the department consider
10 whether the release of a particular record
11 would constitute an unreasonable or
12 unwarranted invasion of privacy?

13 A Yes.

14 Q And same question as to the safety
15 exemption. Does the agency, in responding to
16 a FOIL request, consider whether the
17 disclosure would threaten the life or safety
18 of any person?

19 A Yes.

20 Q And then same question about
21 another exemption. Does the agency consider
22 whether disclosure of a particular record
23 would impair contract awards or collective
24 bargaining negotiations?

25 A If appropriate, yes.

1 LAURA MELLO

2 Q How does -- just speaking of this
3 last one about contract awards and collective
4 bargaining, how does the agency apply that
5 exemption or determine whether it could
6 potentially apply?

7 A I do not recall a FOIL request
8 that implicated that specific exemption.

9 Q Has the department ever received
10 records requests under FOIL for disciplinary
11 or personnel records of corrections officers?

12 A Rarely, but yes.

13 Q Has the department received any
14 such requests since June 12th of 2020?

15 A Yes.

16 Q And has the department responded
17 to those requests?

18 A No.

19 Q Going back to the privacy
20 exemption, how does the department determine
21 whether disclosure of a disciplinary record
22 might affect a corrections officer's privacy
23 rights?

24 A (Zoom audio cut out) . . . whose
25 records are being requested if the requester

1 LAURA MELLO

2 is not the person who is requesting -- I just
3 want to -- I'm sorry. I just got a note --
4 message on my screen saying my Internet
5 connection is unstable. I just wanted
6 to . . .

7 Q Oh, okay. No, I think you -- I'm
8 sorry.

9 And I should clarify, and I
10 appreciate that distinction that you just
11 made. I am speaking of requests for records
12 where the requester is not the subject of the
13 records, if that makes sense.

14 A In that case, we would require --
15 we require a notarized authorization from the
16 subject of the records before we release that
17 record. We don't release -- in the context of
18 disciplinary records, we don't release those
19 records -- we don't release those records
20 unless we have them.

21 Q Unless you have a notarized
22 release from the subject of the records. Do I
23 have that right?

24 A Yes.

25 Q Okay. Is there any aspect of --

1 LAURA MELLO

2 and to clarify -- and I apologize for jumping
3 around a bit, when I said we would talk about
4 two time periods, but I want to understand, is
5 that your current policy?

6 A We --

7 MS. SAINT-FORT: Objection to the
8 form, unless -- the witness can answer to
9 the extent it doesn't infringe on
10 privilege.

11 THE WITNESS: I have not made that
12 determination.

13 BY MR. NORTH:

14 Q You cut out; so I just want to
15 clarify. Did you say that you have not made
16 that determination or the department has not
17 made that determination?

18 A That's correct.

19 Q Okay. Thank you.

20 Is the department currently
21 considering whether to change that policy?

22 MS. SAINT-FORT: Objection to
23 form. The witness can answer to the extent
24 it does not breach privilege.

25 THE WITNESS: Can you repeat the

1 LAURA MELLO

2 question, please?

3 BY MR. NORTH:

4 Q Is the department currently
5 considering whether to change that policy?

6 MS. SAINT-FORT: Same objection.

7 THE WITNESS: We have not made
8 that determination.

9 BY MR. NORTH:

10 Q My question was just slightly
11 different, and it is whether the department is
12 currently considering whether to change the
13 policy.

14 MS. SAINT-FORT: Objection to
15 form. I'm also objecting on the basis of
16 privilege. The witness can answer to the
17 extent it does not breach privileged
18 communications.

19 THE WITNESS: We have not made
20 that determination yet.

21 BY MR. NORTH:

22 Q I'm just asking a slightly
23 different question and certainly not looking
24 into the substance of your consideration. I'm
25 just looking for an answer on whether the

1 LAURA MELLO

2 department is currently considering whether to
3 permit individuals other than the officers
4 identified in the disciplinary records to
5 access those disciplinary records.

6 MS. SAINT-FORT: Objection on the
7 basis of privilege. The witness has
8 already answered. I'm going to instruct
9 her not to answer any further because the
10 answer to that question would necessarily
11 reveal privileged communications.

12 BY MR. NORTH:

13 Q Are you going to follow your
14 counsel's instruction?

15 A Yes.

16 Q Going back to the privacy
17 exemption, what types of information has the
18 department withheld under this exemption in
19 the past?

20 A We have withheld the names of
21 individuals. We have withheld identifying
22 numbers, such as field numbers, book and case
23 numbers, NYCET numbers. We have withheld date
24 of birth. We have withheld addresses, phone
25 numbers, email addresses. We have withheld

1 LAURA MELLO

2 many other types of identifying information.

3 We have sometimes withheld other information,
4 such as work locations, work assignments, if
5 taken together it could potentially identify
6 an individual. Any pieces of --

7 Q Has the department --

8 A Yeah, go ahead.

9 Q No, I'm sorry. I didn't mean to
10 cut you off. You were finishing your answer.

11 A Any pieces of information relating
12 to an individual, specifically an individual
13 that might together or independently might
14 tend to identify that individual.

15 Q Thank you.

16 And aside from information that
17 might tend to identify an individual, has the
18 agency relied on the privacy exemption to deny
19 public access to its records?

20 A I'm not sure I understand the
21 question.

22 Q I'm asking if there are other
23 types of records, aside from records that
24 might tend to identify a member of service or
25 corrections officer, that the agency has

1 LAURA MELLO

2 denied public access to under the privacy
3 exemption to FOIL.

4 A Yes, records that might tend to
5 identify an inmate or an individual in
6 custody.

7 Q Any other types of records?

8 A Records that might tend to
9 identify a nonuniformed employee of the
10 department where applicable, or a visitor.

11 Q Has the department ever --

12 A A visitor to the department also.
13 Any -- any person who comes in contact with
14 the department, there is -- the privacy
15 exemption review would take place if that
16 individual is identified in records.

17 Q Thank you. And I'm sorry I keep
18 stepping on your answers. It's just a quirk
19 of this platform.

20 Has the department ever relied on
21 the privacy exemption to deny a request for
22 officer disciplinary records?

23 MS. SAINT-FORT: I'm sorry, Laura.

24 Did you cut out?

25 THE WITNESS: Did anyone hear me

1 LAURA MELLO

2 answer?

3 MS. SAINT-FORT: No.

4 THE WITNESS: I'm getting an
5 unstable --

6 MR. NORTH: No. I'm sorry.

7 THE WITNESS: -- connection again.

8 MS. SAINT-FORT: No, we did not
9 hear your answer.

10 BY MR. NORTH:

11 Q Could you please repeat it, or
12 would you like me to read the question back?

13 A Please read the question back.

14 Q Has the department ever relied on
15 the privacy exemption to deny any requests for
16 officer disciplinary records?

17 A We rarely get requests for officer
18 disciplinary records. I don't recall
19 immediately whether we have. It's possible.

20 Q And moving to the safety
21 exemption, how does the agency determine
22 whether disclosure of a record might affect
23 the life or safety of any person?

24 A The Department of Correction
25 operates in a very safe and secure

1 LAURA MELLO

2 environment. Safety is paramount in our
3 facilities. So we review records very
4 carefully to determine whether the disclosure
5 of any particular information might be a
6 safety or security risk to everyone working or
7 living in our facilities or the department in
8 general.

9 Q Can you provide an example of a
10 document that the department has withheld or
11 would withhold under the safety exemptions?

12 A Yes.

13 MS. SAINT-FORT: Object to the
14 form.

15 You can answer.

16 THE WITNESS: There was a document
17 that revealed the identity of a
18 confidential informer and the actions that
19 that person had taken.

20 BY MR. NORTH:

21 Q Can you provide any examples of a
22 document that relates to a correction officer
23 that --

24 A You're frozen.

25 Q -- the department would withhold?

1 LAURA MELLO

2 A I can't . . .

3 Q I think we might be having
4 connection issues, but can you hear me now,
5 Ms. Mello? Are you able to hear me?

6 A Now I can hear. I -- I -- after I
7 answered my last question -- I can hear you.
8 Can you hear me?

9 Q Yes, I can. You're cutting out a
10 bit, but I'll just try that question again.
11 Can you provide any examples of a
12 document that relates to a --

13 A Yes. I didn't hear the question.

14 Q Okay. Can you provide any
15 examples of a document that relates to a
16 corrections officer that the department would
17 withhold under the safety exemption?

18 A Should I try to call in and not
19 use the audio -- the Internet audio? Would
20 that help?

21 Q I would have to defer to our tech
22 team on that, if that's a solution.

23 DOCUMENT TECH: Yes, Ms. Mello,
24 you can actually -- yeah, you can actually
25 call in. I think we should go off the

1 LAURA MELLO

2 record, and then we can deal with this
3 technical problem. Is that okay?

4 MS. SAINT-FORT: That's fine.

5 MR. NORTH: Yes, let's do that,
6 please.

7 THE VIDEOGRAPHER: We're off
8 record at 10:23 a.m.

9 (Break taken from 10:23 a.m. to
10 10:27 a.m.)

11 THE VIDEOGRAPHER: We're back on
12 the record at 10:27 a.m.

13 BY MR. NORTH:

14 Q Okay. Ms. Mello, I had previously
15 asked a question, and it seems like you might
16 have answered it, but I didn't hear it. So if
17 you could just bear with me, I'll ask the same
18 question again.

19 Can you provide any examples of a
20 document that relates to a corrections officer
21 that the department would withhold under the
22 safety exemption?

23 A Relates to the -- can you clarify
24 that, please?

25 Q Sure.

1 LAURA MELLO

2 So does the department possess
3 records that relate to corrections officers,
4 such as their personnel files?

5 A Yes.

6 Q And does the department consider
7 whether the release of those records could
8 implicate the safety exemption?

9 A Yes. If we get a request for
10 them, yes.

11 Q And walk me through that analysis
12 just a bit so I can understand how the
13 department views the safety exemption in the
14 specific context of a request for officer --
15 corrections officer personnel files. What are
16 the safety considerations at work?

17 A The safety considerations with
18 respect to records pertaining to a correction
19 officer are the same concerns that pertain to
20 any record possessed by the department. We
21 work in a very safe and secure environment,
22 and there are many safety considerations in
23 that context. And so any record is reviewed
24 for potential safety or security concerns that
25 would affect either the safety and security of

1 LAURA MELLO

2 any one individual person or the safety and
3 security of the functioning of the jail as a
4 whole.

5 Q And can you provide any examples
6 of information that the department contains
7 that would not be disclosable because of the
8 safety exemption?

9 MS. SAINT-FORT: Objection to
10 form.

11 You can answer.

12 THE WITNESS: Records that might
13 describe the method of assessing a
14 potential security breach in a facility and
15 how officers are to respond to that breach.

16 BY MR. NORTH:

17 Q Are there any records contained
18 within corrections officer personnel files
19 that would affect the life or safety of any
20 person if disclosed?

21 A Every file is reviewed in its
22 entirety to ensure that anything relating to
23 safety or security is appropriately reviewed
24 and addressed.

25 Q My question was just a bit

1 LAURA MELLO
2 different, and it was asking about any
3 specific types of records, examples of
4 specific types of records contained within
5 personnel files that could affect the life or
6 safety of any person if disclosed.

7 MS. SAINT-FORT: Objection to
8 form.

9 You can answer if you understand.

10 THE WITNESS: There are many types
11 of records that may be within a file, and
12 if those records related to something
13 that -- there are many types of records in
14 the file. Not -- the same records are not
15 in every file. That's why we have to
16 review every file individually. It could
17 be -- so to the extent that it would
18 contain a record that describes a security
19 feature of the jail, that just describes
20 security feature -- the security response,
21 that would be taken into consideration.

22 BY MR. NORTH:

23 Q And could that information be
24 included in personnel files?

25 MS. SAINT-FORT: Objection. Form.

1 LAURA MELLO

2 You can answer.

3 THE WITNESS: Unlikely, but
4 possibly.

5 BY MR. NORTH:

6 Q Is that possibility the reason for
7 the file-by-file review?

8 A One of them.

9 Q And what are the others?

10 A We always review every document
11 before it goes out. We don't assume anything.

12 Q Why is it important to review
13 every document before it goes out?

14 A To ensure that there is no
15 information that is disclosed that should not
16 be disclosed or must not be disclosed.

17 Q Do you ever take a categorical
18 approach as opposed to an individual approach
19 in determining whether certain categories of
20 records should be disclosed, or do you always
21 review each record before it goes out?

22 A If the record is available to us
23 and we receive it, we review it before we
24 disclose it.

25 Q On an individual basis?

1 LAURA MELLO

2 A Yes.

3 Q Does the department forward copies
4 of its FOIL denial letters to the law
5 department?

6 A No.

7 Q Are you aware of any legal
8 requirement that the department do so?

9 A No.

10 Q Does the department have a
11 responsibility to protect the safety of its
12 officers?

13 MS. SAINT-FORT: Objection to
14 form. And also outside the scope of this
15 topic, unless you can connect it to FOIL.

16 MR. NORTH: I'm happy to connect
17 it to FOIL.

18 BY MR. NORTH:

19 Q Does the department have a
20 responsibility to protect the safety of its
21 officers in responding to a FOIL request?

22 A The department has a
23 responsibility to protect the safety of all
24 individuals who work and live in its
25 facilities, in responding to a FOIL request.

1 LAURA MELLO

2 Q We spoke earlier about the
3 Committee on Open Government. Is it fair to
4 describe the committee as the statewide
5 authority on the scope and application of FOIL
6 by agencies in New York?

7 A Yes.

8 Q And I think you testified earlier
9 that the department considers the views of the
10 committee in deciding how to respond to FOIL
11 requests. Is that an accurate
12 characterization of your testimony?

13 A The department may consider --
14 yes.

15 Q And I think you also testified
16 that the department stays abreast of the
17 committee's advisory opinions. Is that an
18 accurate characterization of your testimony?

19 A I review, periodically,
20 information on the Committee on Open
21 Government website, yes.

22 Q Has the department ever sought the
23 views of the committee on the proper
24 application of FOIL to a particular case?

25 A I have not consulted with the

1 LAURA MELLO

2 Committee on Open Government.

3 Q Are you aware of anyone else at
4 the department doing so?

5 A No.

6 Q Is the department aware that the
7 committee has long advised that public
8 disclosure of unsubstantiated or unfounded
9 misconduct complaints could constitute an
10 unwarranted invasion of privacy?

11 A Could you repeat that, please?

12 Q Sure. I know it was a long-winded
13 question.

14 Is the department aware that the
15 Committee on Open Government has long advised
16 that public disclosure of unsubstantiated or
17 unfounded misconduct complaints could
18 constitute an unwarranted invasion of privacy?

19 A I'm aware that the unwarranted
20 invasion of privacy is a consideration in
21 disclosure of such, yes.

22 Q You're specifically aware that the
23 disclosure of unsubstantiated or unfounded
24 allegations could implicate -- could cause an
25 invasion of privacy; is that correct?

1 LAURA MELLO

2 A Yes.

3 Q Do you agree with this position?

4 MS. SAINT-FORT: Objection to
5 form.

6 You can answer to the -- as to the
7 department.

8 THE WITNESS: The department
9 agrees --

10 BY MR. NORTH:

11 Q I'm sorry. Just -- go ahead.

12 A Go ahead.

13 Q Just to clarify, whenever I do say
14 "you," I am referring to the royal you, the
15 department.

16 A The department's position has been
17 that such a disclosure could be an unwarranted
18 invasion of privacy.

19 Q And how long has that been the
20 position of the department?

21 A Since I've been there.

22 Q Does that remain the position of
23 the department?

24 MS. SAINT-FORT: Objection to
25 form.

1 LAURA MELLO

2 You can answer so long as it
3 doesn't breach privileged conversations.

4 THE WITNESS: The department has
5 been reviewing all recent legislation and
6 recent issues.

7 BY MR. NORTH:

8 Q And just to check and so that it's
9 clear on the record, is it the position of the
10 department that the disclosure of
11 unsubstantiated or unfounded allegations
12 against corrections officers could constitute
13 an unwarranted invasion of privacy?

14 MS. SAINT-FORT: Objection.
15 Privilege. You can answer to the extent it
16 doesn't -- your response does not breach
17 privilege.

18 THE WITNESS: The department's
19 position has been that such disclosure
20 could be an unwarranted invasion of
21 privacy.

22 BY MR. NORTH:

23 Q Thank you.

24 Does the department have policy or
25 practice for how to handle a request for

1 LAURA MELLO

2 unsubstantiated or unfounded allegations
3 against officers?

4 A The department's policy relating
5 to requests for officer disciplinary records
6 is consistent across -- for any request for
7 disciplinary records. The department receives
8 very few such requests.

9 Q And is there -- when you say "the
10 department's policy relating to requests," is
11 that an unwritten policy?

12 A That is an unwritten policy.

13 Q And is it the unwritten policy or
14 practice of the department not to disclose
15 unsubstantiated or unfounded allegations
16 against corrections officers?

17 MS. SAINT-FORT: Objection.

18 You can answer.

19 THE WITNESS: Am I to answer? I
20 didn't hear.

21 MS. SAINT-FORT: Yes, you can
22 answer to the extent that it doesn't
23 infringe on privilege.

24 THE WITNESS: Could you repeat the
25 question, please?

1 LAURA MELLO

2 BY MR. NORTH:

3 Q Yes.

4 Is it the unwritten policy or
5 practice of the department not to disclose
6 unsubstantiated or unfounded allegations
7 against corrections officers?

8 A It has been the department's
9 policy not to disclose disciplinary records
10 unless the department receives a notarized
11 authorization from the individual whose --
12 whose records they are.

13 Q And going back to the practice of
14 responding to FOIL requests, who is reviewing
15 the requests and potentially responsive
16 documents for the department?

17 A The -- when a request comes in, it
18 is reviewed by a FOIL unit staff member.
19 There are many requests that are very standard
20 and common, such as requests for inmate files.
21 If a request relates to a disciplinary
22 request, they are instructed to notify me of
23 all such requests, and then I review the
24 request myself.

25 Q What is the reason for that

1 LAURA MELLO

2 escalation to you in the case of requests for
3 disciplinary records?

4 A In the past under 50-a, it was
5 very important to ensure that we complied with
6 the requirement not to disclose such
7 (indiscernible).

8 CERTIFIED STENOGRAPHER: I'm
9 sorry. I didn't catch that last word.

10 THE WITNESS: Such records.

11 BY MR. NORTH:

12 Q And when those requests were
13 elevated to you in the past under 50-a -- let
14 me start that question over.

15 In the past when records requests
16 were elevated to you because they encompassed
17 disciplinary records, did you consider
18 anything other than Section 50-a in
19 determining whether the requests should be
20 granted or denied?

21 A The -- we rarely get those
22 requests. So I would -- I would consider any
23 exemption -- any applicable exemption under
24 FOIL, any mandatory or permissive exemption
25 under FOIL. So it could encompass those, yes.

1 LAURA MELLO

2 Q Just to check, separate and apart
3 from 50-a, you would apply the FOIL exemptions
4 to requests for disciplinary records?

5 MS. SAINT-FORT: Objection to
6 form.

7 You can answer.

8 THE WITNESS: Where appropriate,
9 yes.

10 BY MR. NORTH:

11 Q And I think you testified earlier
12 that the department has received requests for
13 disciplinary records since June 12, 2020; is
14 that correct?

15 A That's correct.

16 Q Who has asked for disciplinary
17 records from the department since June 12th,
18 2020?

19 A Can -- who as in --

20 Q Can you please identify the
21 requesters.

22 A I don't have the names. I don't
23 have their names handy.

24 Q Can you describe for me the nature
25 of those requests in any way, such as the

1 LAURA MELLO

2 types of information sought?

3 MS. SAINT-FORT: Objection to
4 form.

5 You can answer, if you understand.

6 THE WITNESS: We have received
7 requests for disciplinary records for
8 officers.

9 BY MR. NORTH:

10 Q Do those requests encompass
11 unsubstantiated or unfounded allegations
12 against officers?

13 A The request itself?

14 Q Yes.

15 A I don't believe so.

16 Q Just to clarify, the department
17 has received requests for disclosure of
18 disciplinary records since June 12th, but you
19 don't believe that those requests encompass
20 unsubstantiated allegations against
21 corrections officers?

22 A I wouldn't say that's exactly
23 accurate. The requests may not specify the
24 word "unsubstantiated." They have -- there
25 have been requests for all disciplinary

1 LAURA MELLO

2 records.

3 Q There have been requests for all
4 disciplinary records maintained by the
5 department for corrections officers; is that
6 correct?

7 A Pertaining to specific
8 individuals.

9 Q Have there been any large-volume
10 requests that are not specific to particular
11 corrections officers?

12 A There is one that is somewhat
13 broader.

14 Q Broader in what respect?

15 A Relating to multiple officers.

16 Q Can you give me a sense for the
17 quantity or volume of records requested?

18 A The volume of records? No.
19 The -- approximately ten officers, I believe.

20 Q Is the requester approximately --
21 is the request for disciplinary records of
22 approximately ten officers the largest such
23 request that you've seen since June 12th, to
24 your knowledge?

25 A To my knowledge as of yesterday.

1 LAURA MELLO

2 Q Would you agree that disclosure of
3 unsubstantiated or unfounded complaints could
4 have an adverse effect on the reputation or
5 good name of the officers they identify?

6 MS. SAINT-FORT: Objection to
7 form.

8 You can answer.

9 THE WITNESS: We have not yet made
10 that determination.

11 BY MR. NORTH:

12 Q Without breaching any
13 attorney-client privilege, can you tell me
14 whether that is currently a subject of
15 conversation at the department?

16 A That is something that we are
17 aware is an issue.

18 Q And in what respect is that an
19 issue?

20 MS. SAINT-FORT: Objection to
21 form. Privilege. You can answer so long
22 as your response does not breach
23 attorney-client privilege.

24 THE WITNESS: We are aware that
25 that is a concern.

1 LAURA MELLO

2 BY MR. NORTH:

3 Q Again without breaching privilege,
4 can you explain to me whether the department
5 has a concern that the release of
6 unsubstantiated allegations lodged against
7 corrections officers could affect the
8 reputation of those officers?

9 MS. SAINT-FORT: Objection. Asked
10 and answered and also privileged.

11 You can answer to the extent it
12 does not infringe on attorney-client
13 privilege.

14 MR. NORTH: That wasn't the basis
15 for my question. That was the basis for my
16 question, and I'm happy to ask again.

17 BY MR. NORTH:

18 Q Without breaching privilege, can
19 you explain to me whether the department has a
20 concern that the release of unsubstantiated
21 allegations lodged against corrections
22 officers could affect the reputations of those
23 officers?

24 MS. SAINT-FORT: Objection. Asked
25 and answered.

1 LAURA MELLO

2 You can answer again.

3 THE WITNESS: It is something that
4 we are aware is a concern.

5 BY MR. NORTH:

6 Q Without breaching privilege, is
7 that a concern of the department?

8 A That is something the department
9 is aware is a concern.

10 Q And in deciding whether
11 unsubstantiated or unfounded complaints should
12 be disclosed, has the department considered
13 whether such disclosure could affect
14 corrections officers' future employment
15 opportunities?

16 MS. SAINT-FORT: Objection.
17 You can answer to the extent it
18 does not breach attorney-client privilege.

19 THE WITNESS: That's -- the
20 department is aware that is a concern.

21 BY MR. NORTH:

22 Q Is that a concern of the
23 department?

24 MS. SAINT-FORT: Objection. Asked
25 and answered.

1 LAURA MELLO

2 THE WITNESS: The department is
3 aware that is a concern.

4 BY MR. NORTH:

5 Q I'm just asking a slightly
6 different question. Is the department
7 concerned that the release of unsubstantiated
8 or unfounded complaints should be -- could
9 affect the future employment opportunities of
10 the identified corrections officers?

11 MS. SAINT-FORT: Objection.
12 Privileged. To respond would necessarily
13 breach a attorney-client privilege. So I'm
14 going to instruct the witness not to
15 answer.

16 BY MR. NORTH:

17 Q Are you going to follow your
18 counsel's advice?

19 A Yes.

20 MR. NORTH: Let's look at Tab 14,
21 please.

22 (Exhibit Number 2, Opinion of
23 the Committee on Open Government,
24 FOIL AO 19775, dated 7/27/20, was
25 marked for identification.)

1 LAURA MELLO

2 MR. NORTH: This is an advisory
3 opinion of the Committee on Open
4 Government, and I'll mark this as an
5 exhibit. And I may need to retroactively
6 go back and mark the previous document that
7 we showed as an exhibit. That should also
8 be numbered and introduced.

9 I believe this is Exhibit 2 for
10 this deposition, but please correct me if
11 that's wrong.

12 BY MR. NORTH:

13 Q Are you familiar with this
14 advisory opinion, Ms. Mello?

15 A Yes.

16 Q When did you review this advisory
17 opinion?

18 A I'm not sure of the exact date.
19 Sometime within the last week.

20 Q How did this advisory opinion come
21 to your attention?

22 A It was forwarded to me by the law
23 department.

24 MR. NORTH: If we can look at
25 page 2, seven lines down. So the first

1 LAURA MELLO

2 highlighted block. Actually, we'll look at
3 the second highlighted block.

4 BY MR. NORTH:

5 Q Do you see where it says: "The
6 new provisions of FOIL did not make changes to
7 provisions concerning personal privacy as
8 defined in Section 87(2)(b)"?

9 A Yes.

10 Q Are you aware of the new
11 provisions of FOIL?

12 A Yes.

13 Q And do you agree with this
14 statement that the new provisions of FOIL did
15 not make changes to provisions concerning
16 personal privacy as defined in 87(2)(b)?

17 MS. SAINT-FORT: Objection.

18 You can answer.

19 THE WITNESS: Yes.

20 BY MR. NORTH:

21 Q I'm sorry. Did you say yes?

22 A Yes.

23 Q And on page 2 also -- actually,
24 the following sentence says: "Based on our
25 longstanding interpretation that requires an

1 LAURA MELLO

2 agency to determine if an unsubstantiated or
3 unfounded complaint against an employee would,
4 if disclosed, constitute an unwarranted
5 invasion of personal privacy, and absent
6 language expressing that the legislature
7 intended that law enforcement disciplinary
8 records should enjoy less protection than the
9 disciplinary records of other government
10 employees, we do not impute such an intent."

11 Does the department agree with
12 this sentence?

13 MS. SAINT-FORT: Objection.

14 You can answer.

15 THE WITNESS: I just want to read
16 it myself here before I answer.

17 BY MR. NORTH:

18 Q Please do.

19 A (Reviewing document.)

20 Yes. I answered yes. I don't
21 know if you heard me.

22 Q Thank you. Thank you. Yes, I
23 did.

24 And in the final paragraph, the
25 committee states in the highlighted portion:

1 LAURA MELLO

2 "In light of the repeal of Section 50-a, a
3 request for disciplinary records relating to a
4 police officer must be reviewed in the same
5 manner as a request for disciplinary records
6 of any other public employee."

7 Do you see that text?

8 A Yes.

9 Q Understanding that this is
10 directed to a police officer, if we just
11 substitute "corrections officer" for "police
12 officer" in this sentence, would the
13 department agree with this statement of the
14 committee?

15 MS. SAINT-FORT: Objection.

16 You can answer to the extent that
17 it doesn't infringe on privilege.

18 THE WITNESS: The department
19 understands that this is the advice of the
20 Committee on Open Government.

21 BY MR. NORTH:

22 Q Does the department intend to
23 follow this advice?

24 MS. SAINT-FORT: Objection.

25 You can answer to the extent it

1 LAURA MELLO

2 doesn't breach attorney-client privilege.

3 THE WITNESS: The department is
4 taking this under consideration.

5 BY MR. NORTH:

6 Q Is there an existing policy in
7 place at the department that is not being
8 taken under consideration that pertains to the
9 disclosure of disciplinary records?

10 MS. SAINT-FORT: Objection. Can
11 you specify the time frame for the
12 question, please.

13 MR. NORTH: I did in the question,
14 but I'm happy do that again --

15 MS. SAINT-FORT: Sorry.

16 MR. NORTH: -- and clarify that.
17 That's fine.

18 MS. SAINT-FORT: Thank you.

19 BY MR. NORTH:

20 Q Does the department have an
21 existing policy that is in force today that
22 relates to the disclosure of disciplinary
23 records in response to FOIL requests?

24 MS. SAINT-FORT: You can --
25 objection.

1 LAURA MELLO

2 You can answer to the extent it
3 doesn't breach attorney-client privilege.

4 THE WITNESS: The department is
5 reviewing --

6 BY MR. NORTH:

7 Q Okay.

8 A -- its policies relating to (Zoom
9 audio cut out) . . .

10 Q I'm sorry. You cut out. The
11 department is reviewing?

12 A Its policies relating to the
13 disclosure of this from everybody.

14 Q And I appreciate the department is
15 currently reviewing those policies, but my
16 question was just a bit different, and that is
17 whether there is a policy that is currently in
18 force at the department for responding to FOIL
19 requests for disciplinary records of
20 corrections officers?

21 MS. SAINT-FORT: Objection.

22 You can answer.

23 THE WITNESS: The policy is under
24 review.

25 ///

1 LAURA MELLO

2 BY MR. NORTH:

3 Q Has the policy been suspended?

4 A The policy is under review.

5 Q Is the department's current
6 position -- strike that.

7 Prior to the repeal of 50-a, was
8 it the department's position that a request
9 for disciplinary records for a corrections
10 officer must be reviewed in the same manner as
11 a request for disciplinary records of any
12 other public employee?

13 MS. SAINT-FORT: Objection.

14 You can answer.

15 THE WITNESS: Can you repeat the
16 question again?

17 MR. NORTH: Could I have the court
18 reporter read that question back, please.

19 (Previous question read back.)

20 THE WITNESS: Prior to the repeal
21 of 50-a, it was not the department's
22 position that a request for disciplinary
23 records of an officer must be reviewed in
24 the same manner as the disciplinary
25 officers -- as disciplinary records of

1 LAURA MELLO

2 another employee.

3 BY MR. NORTH:

4 Q Why was that the case?

5 A Because 50-a -- because of 50-a.

6 Q And after the repeal of 50-a or
7 after June 12th, 2020, was it the position of
8 the department that the request for
9 disciplinary records relating to a corrections
10 officer must be reviewed in the same manner as
11 a request for disciplinary records of any
12 other public employee?

13 MS. SAINT-FORT: Objection.

14 THE WITNESS: That is --

15 MS. SAINT-FORT: You can answer.

16 BY MR. NORTH:

17 Q I'm sorry. I didn't hear a
18 response.

19 MS. SAINT-FORT: The court
20 reporter can read back her answer, if you
21 got it.

22 CERTIFIED STENOGRAPHER: I didn't
23 hear one.

24 MS. SAINT-FORT: Okay.

25 THE WITNESS: That is under

1 LAURA MELLO

2 review.

3 BY MR. NORTH:

4 Q And is the department considering
5 whether requests for disciplinary records
6 relating to a corrections officer should be
7 reviewed in the same manner as a request for
8 disciplinary records of any other public
9 employee, in light of the repeal of 50-a?

10 MS. SAINT-FORT: Objection. Asked
11 and answered and privileged.

12 You can respond to the extent it
13 does not breach attorney-client privilege.

14 BY MR. NORTH:

15 Q And to clarify, I'm not asking for
16 the substance of any conversations that you've
17 had with an attorney on this subject. I'm
18 asking a question that does not go to the
19 substance or -- and does not call for
20 privileged information. I'm merely asking a
21 yes-or-no question as to whether the
22 department is considering whether requests for
23 disciplinary records relating to a corrections
24 officer should be reviewed in the same manner
25 as requests for disciplinary records of any

1 LAURA MELLO

2 other public employee, in light of the repeal
3 of 50-a.

4 MS. SAINT-FORT: I'm going to make
5 the same objection because your question
6 necessarily requires an answer based on
7 privileged communications.

8 But you can answer to the extent
9 you don't reveal such communication.

10 THE WITNESS: That is under the --
11 that is under review.

12 BY MR. NORTH:

13 Q And to be clear, I'm not asking
14 for the position or any legal advice that you
15 have received on the proper position but
16 merely whether that is being considered.

17 MS. SAINT-FORT: Objection.

18 THE WITNESS: The department --

19 MS. SAINT-FORT: Same. You can
20 answer to the extent it doesn't infringe
21 privilege.

22 THE WITNESS: The department's
23 position is under review.

24 BY MR. NORTH:

25 Q How would the department handle a

1 LAURA MELLO

2 FOIL request today for disciplinary records of
3 an employee who was not a law enforcement
4 officer?

5 MS. SAINT-FORT: Objection.

6 THE WITNESS: The department --

7 MS. SAINT-FORT: You can answer.

8 THE WITNESS: The department
9 receives that request, makes the internal
10 request for the records, and when receives
11 the records, reviews the records for any
12 applicable FOIL -- any applicable FOIL
13 exemptions, whether they are mandatory or
14 permissive.

15 BY MR. NORTH:

16 Q And would the department handle a
17 FOIL request for disciplinary records of a law
18 enforcement officer differently from what you
19 just described?

20 MS. SAINT-FORT: Objection.

21 You can answer to the extent it
22 does not breach privilege.

23 THE WITNESS: The department is
24 not currently releasing disciplinary
25 records of officers because there is a

1 LAURA MELLO

2 prohibition on doing so.

3 BY MR. NORTH:

4 Q And I certainly understand why
5 that is the case, but in the absence of that
6 prohibition -- strike that.

7 Are you referring to the
8 injunction in this lawsuit?

9 A Yes.

10 Q And in the absence of that
11 injunction, would the department treat a FOIL
12 request for disciplinary records of a law
13 enforcement officer differently from the
14 process you described for a nonlaw enforcement
15 officer?

16 MS. SAINT-FORT: Objection.

17 THE WITNESS: That is under --

18 MS. SAINT-FORT: Privilege. You
19 can answer to the extent it does not
20 infringe on attorney-client privilege.

21 THE WITNESS: That is under
22 review.

23 BY MR. NORTH:

24 Q I just have a few more questions
25 for you today.

1 LAURA MELLO

2 MR. NORTH: If we can look at
3 Tab 5, please. I'd like to introduce this
4 as the next exhibit, which I believe is
5 Exhibit 3 for this deposition, but the
6 court reporter will correct me if that's
7 wrong.

8 (Exhibit Number 3, Letter from
9 Rebecca G. Quinn and Dominique
10 Saint-Fort to Judge Failla dated
11 7/25/20, was marked for
12 identification.)

13 BY MR. NORTH:

14 Q This is a letter from the New York
15 City Law Department to the United States
16 District Court dated July 25, 2020. Have you
17 seen this record -- have you seen this
18 document before, Ms. Mello?

19 A I have not.

20 MR. NORTH: If we could just go
21 to, I believe, the second page.

22 BY MR. NORTH:

23 Q The highlighted portion there, do
24 you see where it states --

25 MR. NORTH: And if we could blow

1 LAURA MELLO

2 up that text a little bit, please.

3 BY MR. NORTH:

4 Q You see where it states: "The
5 repeal was signed on June 12, 2020, and the
6 City agencies that had applicable records,
7 including the CCRB, all separately began to
8 determine ways that they could provide the
9 public the information and data within their
10 possession, which included unsubstantiated,
11 exonerated, and unfounded cases, that would be
12 subject to FOIL. The CCRB immediately began
13 efforts to provide the information that would
14 now be disclosable under FOIL to the public,
15 to fulfill the legislature's mandate."

16 Do you agree that the repeal of
17 50-a was a mandate from the legislature to
18 release all disciplinary records?

19 MS. SAINT-FORT: Objection. I'm
20 going to instruct the witness not to answer
21 as outside of the scope of this topic.

22 MR. NORTH: This topic is FOIL
23 policies and practices and the protection
24 of private information, and this passage of
25 the law department's letter relates to the

1 LAURA MELLO

2 disclosure of documents under FOIL. And I
3 am asking the witness for the department's
4 position on its obligations to withhold or
5 disclose particular documents under FOIL.
6 So it's very much relevant to Topic
7 Number 4.

8 MS. SAINT-FORT: I disagree. Your
9 specific question, which can be read back
10 by the court reporter, if necessary, was
11 whether she agrees that 50-a was a mandate
12 to disclose records, and that's not within
13 the scope of the topic.

14 MR. NORTH: I certainly intended
15 to ask about the department's views. So
16 I'll ask that question again.

17 BY MR. NORTH:

18 Q Is it the department's position
19 that the repeal of 50-a was a mandate from the
20 legislature to release all disciplinary
21 records?

22 MS. SAINT-FORT: Objection.

23 You can answer to the extent it
24 does not breach attorney-client privilege.

25 THE WITNESS: I have not

1 LAURA MELLO

2 previously seen this sentence or this
3 description, and as I have previously
4 stated, the department's policy is under
5 review.

6 BY MR. NORTH:

7 Q And does the department have a
8 position as to whether the repeal of 50-a is a
9 requirement or a mandate by the State to
10 disclose all disciplinary records
11 notwithstanding the FOIL exemptions?

12 MS. SAINT-FORT: Objection.

13 You can answer to the extent it
14 does not breach attorney-client privilege.

15 THE WITNESS: The department is
16 reviewing this and other related policies.

17 BY MR. NORTH:

18 Q Is the department considering any
19 proactive disclosure of disciplinary records
20 in response to the repeal of 50-a?

21 MS. SAINT-FORT: Objection. I'm
22 going to instruct the witness not to
23 answer. It's outside the scope of this
24 topic.

25 ///

1 LAURA MELLO

2 BY MR. NORTH:

3 Q Are you going to follow your
4 counsel's advice?

5 A Yes.

6 Q Does the department have a
7 position as to whether or not the disciplinary
8 records of its corrections officers should
9 receive the protections that other City
10 employees are afforded?

11 MS. SAINT-FORT: Objection. Asked
12 and answered.

13 BY MR. NORTH:

14 Q You can answer.

15 A Could you read the question again?

16 Q Does the department have a
17 position as to whether or not the disciplinary
18 records of its corrections officers should
19 receive the same protections that other City
20 employees are afforded?

21 A The department's policies on
22 responding to these requests are under review.

23 MS. SAINT-FORT: I added a couple
24 minutes for extra time, but I think we
25 might be at 90 minutes. I don't know if

1 LAURA MELLO

2 you want to confirm with Jeremy. I don't
3 know if there's a time frame on the video,
4 but I added time for breaks and additional
5 technical issues.

6 MR. NORTH: Okay. I just had a
7 few more questions, if you could just give
8 me a couple of more minutes to finish up
9 and get done with --

10 MS. SAINT-FORT: Probably just --
11 probably just one, but I think we're at the
12 time -- the time limit.

13 MR. NORTH: Okay.

14 BY MR. NORTH:

15 Q Has the department changed its
16 position as to which disciplinary records it
17 would release in light of the repeal of 50-a
18 since the repeal of 50-a?

19 MS. SAINT-FORT: Objection.

20 You can answer to the extent that
21 does not infringe on attorney-client
22 privilege.

23 THE WITNESS: The department's
24 position is under review.

25 ///

1 LAURA MELLO

2 BY MR. NORTH:

3 Q But that -- so just one quick
4 follow-up on that.

5 The law department has represented
6 to the Court which disciplinary records the
7 department was planning to publicly release,
8 and my question goes to whether that
9 representation has been changed or is subject
10 to revision since it was made.

11 MS. SAINT-FORT: I'm going to
12 object. It's outside the scope of this
13 topic. That's different from FOIL
14 requests. So I think with that, we can
15 conclude.

16 MR. NORTH: Okay. Ms. Mello,
17 that's all the questions that I have for
18 you today. I would like to say -- and
19 thank you very much for your time today,
20 and thank you for the time it took to
21 prepare for this deposition. I'm sure that
22 it was an unwelcome intrusion, as it often
23 is into our lives. So thank you very much.
24 I genuinely appreciate that.

25 I do want to say on the record to

1 LAURA MELLO

2 Ms. Saint-Fort that we, to my knowledge,
3 have not received a copy of the model
4 protocols document that was discussed
5 today. That document is referred to in a
6 document that you -- that the law
7 department produced this week, and it
8 clearly is relevant, as the witness
9 testified to the department's consideration
10 of FOIL requests, and should be produced by
11 the close of business today.

12 MS. SAINT-FORT: We'll take that
13 under advisement.

14 MR. NORTH: Okay. Thank you,
15 everyone.

16 THE VIDEOGRAPHER: That concludes
17 today's deposition of Laura Mello. Time
18 off record is 11:14 a.m.

19 (Concluded at 11:14 a.m.)
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LAURA MELLO

Subscribed and sworn to before me
this ____ day of _____, 2020.

(Notary Public)

My Commission
expires:_____

CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF POLK

I, the undersigned authority, certify
that LAURA MELLO remotely appeared before me
and was duly sworn.

WITNESS my hand and official seal this
9th day of August, 2020.

Rhonda Hall-Breuwet, RDR, CRR, LCR, CCR, FPR
Notary Public - State of Florida
My Commission Expires: 9/28/23
Commission No. GG 360849

C E R T I F I C A T E

STATE OF FLORIDA:

I, RHONDA HALL-BREUWET, RDR, CRR, LCR,
CCR, FPR, stenographic shorthand reporter, do
hereby certify:

That the witness whose deposition is
hereinbefore set forth was duly sworn, and
that such deposition is a true record of the
testimony given by such witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 9th day of August, 2020.

RHONDA HALL-BREUWET, RDR, CRR, LCR, CCR, FPR
Stenographic Shorthand Reporter

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: UNIFORMED FIRE OFFICERS
ASSOCIATION, et al. V. BILL de BLASIO, et al.

Dep. Date: August 7, 2020

Deponent: LAURA MELLO

CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reason
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Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS _____ DAY OF _____, 2020

(Notary Public) MY COMMISSION EXPIRES: _____

<p>A</p> <p>able 24:14,16 25:10 25:14,23,24 47:5</p> <p>abreast 20:23 54:16</p> <p>absence 79:5,10</p> <p>absent 70:5</p> <p>access 42:5 43:19 44:2</p> <p>accompanied 18:6</p> <p>accurate 30:22 54:11,18 62:23</p> <p>acknowledged 9:4</p> <p>acknowledgment 18:10</p> <p>action 90:12</p> <p>actions 46:18</p> <p>actual 31:18</p> <p>added 36:23 84:23 85:4</p> <p>additional 20:13,16 85:4</p> <p>address 33:3</p> <p>addressed 50:24</p> <p>addresses 42:24,25</p> <p>adopt 29:19,21</p> <p>adopted 29:23</p> <p>adverse 64:4</p> <p>advice 67:18 71:19 71:23 77:14 84:4</p> <p>advised 55:7,15</p> <p>advisement 87:13</p> <p>advises 32:3</p> <p>advisory 22:5,9,14 22:22 23:3 54:17 68:2,14,16,20</p> <p>affect 38:22 45:22 49:25 50:19 51:5 65:7,22 66:13 67:9</p> <p>afforded 84:10,20</p> <p>agencies 23:19 29:6 29:9,11,16,19 31:4 54:6 81:6</p> <p>agency 28:13 37:15 37:21 38:4 43:18 43:25 45:21 70:2</p>	<p>ago 15:3</p> <p>agree 10:4 12:16 56:3 64:2 69:13 70:11 71:13 81:16</p> <p>agrees 56:9 82:11</p> <p>ahead 43:8 56:11 56:12</p> <p>al 1:5,8 7:8,9 91:2,2</p> <p>allegations 55:24 57:11 58:2,15 59:6 62:11,20 65:6,21</p> <p>Alvarez 4:17 7:19</p> <p>Americas 3:6</p> <p>analysis 49:11</p> <p>answer 14:7,21 16:21 19:7 21:14 21:15 23:11 24:11 26:3,17 30:20 35:13 36:19 40:8 40:23 41:16,25 42:9,10 43:10 45:2,9 46:15 50:11 51:9 52:2 56:6 57:2,15 58:18,19,22 61:7 62:5 64:8,21 65:11 66:2,17 67:15 69:18 70:14 70:16 71:16,25 73:2,22 74:14 75:15,20 77:6,8 77:20 78:7,21 79:19 81:20 82:23 83:13,23 84:14 85:20</p> <p>answered 42:8 47:7 48:16 65:10,25 66:25 70:20 76:11 84:12</p> <p>answers 44:18</p> <p>Anthony 3:9 8:3</p> <p>anthony.coles@d... 3:10</p> <p>AO 6:8 67:24</p> <p>apart 61:2</p> <p>apologize 40:2</p>	<p>appear 27:25</p> <p>appeared 89:7</p> <p>applicable 17:12 44:10 60:23 78:12 78:12 81:6</p> <p>application 17:2 18:25 21:10 22:17 22:25 32:15 54:5 54:24</p> <p>applied 18:22 24:7</p> <p>apply 16:17 24:16 38:4,6 61:3</p> <p>appreciate 39:10 73:14 86:24</p> <p>approach 52:18,18</p> <p>appropriate 18:16 35:5,10 37:25 61:8</p> <p>appropriately 50:23</p> <p>approximately 63:19,20,22</p> <p>April 29:12</p> <p>area 21:23 36:16</p> <p>aside 33:4 43:16,23</p> <p>asked 48:15 61:16 65:9,24 66:24 76:10 84:11</p> <p>asking 41:22 43:22 51:2 67:5 76:15 76:18,20 77:13 82:3</p> <p>aspect 39:25</p> <p>assessed 32:10</p> <p>assessing 50:13</p> <p>assessment 29:15 31:3,6,24 35:3</p> <p>assignments 43:4</p> <p>assist 36:13</p> <p>assistant 8:7 36:11 36:22,23</p> <p>assistants 36:11</p> <p>Association 1:5 7:8 91:2</p> <p>assume 52:11</p> <p>assuming 18:12</p> <p>as-needed 36:14</p>	<p>attending 7:15</p> <p>attention 68:21</p> <p>attorney 7:23 13:22 25:20,21 76:17</p> <p>attorneys 3:3 4:1 13:23 15:4 36:12</p> <p>attorney-client 64:13,23 65:12 66:18 67:13 72:2 73:3 76:13 79:20 82:24 83:14 85:21</p> <p>audio 38:24 47:19 47:19 73:9</p> <p>August 1:17 2:4 7:4 89:11 90:16 91:3</p> <p>authority 23:8,9 34:2 54:5 89:6</p> <p>authorization 18:7 39:15 59:11</p> <p>authorizes 18:8</p> <p>automatically 28:2</p> <p>available 13:14 14:17 33:20,22,23 52:22</p> <p>Avenue 3:6</p> <p>awards 37:23 38:3</p> <p>aware 14:24 32:7 53:7 55:3,6,14,19 55:22 64:17,24 66:4,9,20 67:3 69:10</p> <p>a.m 2:5 7:5 48:8,9 48:10,12 87:18,19</p>	<p>basically 31:7</p> <p>basis 17:11 35:7,8 35:10 36:14 41:15 42:7 52:25 65:14 65:15</p> <p>Bates-stamped 6:5 27:21</p> <p>bear 48:17</p> <p>began 13:9 81:7,12</p> <p>beginning 7:22</p> <p>behalf 8:2 12:12,22 15:6,12,13,15</p> <p>beliefs 12:22</p> <p>believe 62:15,19 63:19 68:9 80:4 80:21</p> <p>Bill 1:8 7:8 91:2</p> <p>binding 23:5,9</p> <p>birth 33:2 42:24</p> <p>bit 19:3 21:8 40:3 47:10 49:12 50:25 73:16 81:2</p> <p>Blasio 1:8 7:9 91:2</p> <p>block 69:2,3</p> <p>blood 90:12</p> <p>blow 80:25</p> <p>book 42:22</p> <p>bottom 28:25</p> <p>breach 40:24 41:17 50:14,15 57:3,16 64:22 66:18 67:13 72:2 73:3 76:13 78:22 82:24 83:14</p> <p>breaching 64:12 65:3,18 66:6</p> <p>break 10:18,20 48:9</p> <p>breaks 85:4</p> <p>broad 30:4,14</p> <p>broaden 63:13,14</p> <p>broadly 30:17</p> <p>build 24:12</p> <p>business 87:11</p>
			<p>B</p> <p>B 6:1</p> <p>back 36:24 38:19 42:16 45:12,13 48:11 59:13 68:6 74:18,19 75:20 82:9</p> <p>bargaining 37:24 38:4</p> <p>based 14:8 15:7,16 24:17,18 69:24 77:6</p>	<p>C</p> <p>C 3:1 90:1,1</p> <p>call 47:18,25 76:19</p>

called 28:4 32:22	56:13 62:16 72:16	85:2	correction 4:14	date 7:4 33:3 42:23
capacity 28:15,20	76:15	confusing 10:6	8:12 11:4,6 12:9	68:18 91:3
capture 10:13	clarifying 37:3	connect 53:15,16	12:13,18 20:10	dated 6:5,8,11
carefully 46:4	clear 57:9 77:13	connection 39:5	36:3 45:24 46:22	27:20 67:24 80:10
case 7:11 39:14	clearly 87:8	45:7 47:4	49:18	80:16
42:22 54:24 60:2	close 87:11	consider 35:9 37:9	corrections 38:11	day 88:13 89:11
75:4 79:5 91:2	Coles 3:9 8:3	37:16,21 49:6	38:22 43:25 47:16	90:16 91:21
cases 81:11	collective 14:8	54:13 60:17,22	48:20 49:3,15	DC 3:13
case-by-case 35:7,7	37:23 38:3	consideration	50:18 57:12 58:16	de 1:8 7:9 91:2
catch 60:9	come 68:20	41:24 51:21 55:20	59:7 62:21 63:5	deal 48:2
categorical 52:17	comes 44:13 59:17	72:4,8 87:9	63:11 65:7,21	deciding 54:10
categories 52:19	Commission 88:18	considerations	66:14 67:10 71:11	66:10
cause 55:24	89:18,19 91:24	49:16,17,22	73:20 74:9 75:9	DEFENDANT 4:1
CCR 1:24 89:16	committee 6:7	considered 30:4	76:6,23 84:8,18	defendants 1:9
90:5,19	21:25 22:3,4,8,15	66:12 77:16	91:4	8:10
CCRB 81:7,12	22:23 54:3,4,10	considering 40:21	counsel 7:20 8:7,9	defer 47:21
certain 52:19	54:20,23 55:2,7	41:5,12 42:2 76:4	8:11,14 11:10,19	defined 69:8,16
certainly 41:23	55:15 67:23 68:3	76:22 83:18	13:9	DEF_UFOA_001...
79:4 82:14	70:25 71:14,20	considers 54:9	counsel's 42:14	6:6 27:21
CERTIFICATE	committee's 54:17	consistent 17:3	67:18 84:4	denial 53:4
89:1	common 24:20	24:16 31:19 33:16	COUNTY 89:4	denied 44:2 60:20
Certified 2:10,12	36:2 59:20	58:6	couple 84:23 85:8	deny 43:18 44:21
8:18,25 31:8 60:8	communication	consistently 24:7	court 1:1 2:11,12	45:15
75:22	21:18 77:9	constant 17:3	7:10 8:14,16 10:9	Dep 91:3
certify 89:6 90:6,11	communications	constitute 33:8	74:17 75:19 80:6	department 4:3,14
change 40:21 41:5	21:16 41:18 42:11	37:11 55:9,18	80:16 82:10 86:6	8:8,12 11:3,6 12:8
41:12	77:7	57:12 70:4	COVID-19 7:16	12:12,15,17,23
changed 20:11,12	comparable 29:21	consulted 54:25	CRR 1:24 89:16	13:7,23 14:9,18
85:15 86:9	complaint 70:3	contact 44:13	90:4,19	15:7,13,14,16
changes 20:23 69:6	complaints 55:9,17	contain 51:18	current 11:8 40:5	16:3,15 18:2,12
69:15	64:3 66:11 67:8	contained 50:17	74:5	18:14 19:11,23,23
characterization	completeness 18:20	51:4	currently 10:24	20:10,20 21:10,21
54:12,18	complied 60:5	contains 50:6	40:20 41:4,12	22:18 23:2,16,20
characterize 30:15	concern 64:25 65:5	context 19:19	42:2 64:14 73:15	24:2,5 28:21
check 57:8 61:2	65:20 66:4,7,9,20	39:17 49:14,23	73:17 78:24	29:23 32:3 36:2,7
chief 28:16	66:22 67:3	Continued 3:25	custody 44:6	37:9 38:9,13,16
Church 4:4	concerned 67:7	contract 37:23 38:3	cut 20:5 26:5 31:9	38:20 40:16,20
City 4:3 8:8 11:3,6	concerning 69:7,15	conversation 64:15	38:24 40:14 43:10	41:4,11 42:2,18
13:24 19:24 23:19	concerns 49:19,24	conversations 57:3	44:24 73:9,10	43:7 44:10,11,12
23:24 29:6,8,11	conclude 86:15	76:16	cutting 47:9	44:14,20 45:14,24
29:11,17 80:15	Concluded 87:19	copies 53:3		46:7,10,25 47:16
81:6 84:9,19	concludes 87:16	copy 87:3		48:21 49:2,6,13
citywide 6:4 23:23	conducted 18:22	corporation 8:7,9		49:20 50:6 53:3,5
27:18 28:4	conference 7:20	correct 25:7,12		53:8,10,19,22
City's 28:16	confidential 34:6,9	40:18 55:25 61:14		54:9,13,16,22
clarify 36:21 39:9	46:18	61:15 63:6 68:10		55:4,6,14 56:7,8
40:2,15 48:23	confirm 15:5,14	80:6		56:15,20,23 57:4

57:10,24 58:7,14 59:5,10,16 61:12 61:17 62:16 63:5 64:15 65:4,19 66:7,8,12,20,23 67:2,6 68:23 70:11 71:13,18,22 72:3,7,20 73:4,11 73:14,18 75:8 76:4,22 77:18,25 78:6,8,16,23 79:11 80:15 83:7 83:15,18 84:6,16 85:15 86:5,7 87:7 department's 15:7 15:16 24:22 28:13 30:3 56:16 57:18 58:4,10 59:8 74:5 74:8,21 77:22 81:25 82:3,15,18 83:4 84:21 85:23 87:9 Deponent 91:3,19 deposed 9:17 deposition 1:15 2:8 7:6,13 10:17 12:16 13:21 15:5 15:12 68:10 80:5 86:21 87:17 90:7 90:9 depositions 9:20 deputy 13:8 29:12 describe 11:15 13:11 17:6,18 31:4 32:19 33:11 35:2 50:13 54:4 61:24 described 19:18,18 26:10 78:19 79:14 describes 17:24 18:13 51:18,19 description 6:3 83:3 designated 12:23 detail 19:3 31:23 determination 40:12,16,17 41:8	41:20 64:10 determine 24:23 35:4 38:5,20 45:21 46:4 70:2 81:8 determining 16:17 22:16,24 30:7,13 52:19 60:19 develop 29:20 different 12:8 26:9 41:11,23 51:2 67:6 73:16 86:13 differently 78:18 79:13 Diplomate 2:10 DIRECT 5:4 9:7 directed 71:10 disagree 82:8 disciplinary 27:11 27:13 34:19 38:10 38:21 39:18 42:4 42:5 44:22 45:16 45:18 58:5,7 59:9 59:21 60:3,17 61:4,13,16 62:7 62:18,25 63:4,21 70:7,9 71:3,5 72:9 72:22 73:19 74:9 74:11,22,24,25 75:9,11 76:5,8,23 76:25 78:2,17,24 79:12 81:18 82:20 83:10,19 84:7,17 85:16 86:6 disclosable 32:11 50:7 81:14 disclose 34:11 52:24 58:14 59:5 59:9 60:6 82:5,12 83:10 disclosed 33:21,25 50:20 51:6 52:15 52:16,16,20 66:12 70:4 disclosure 23:25 32:11 33:7 35:5,9 37:6,17,22 38:21	45:22 46:4 55:8 55:16,21,23 56:17 57:10,19 62:17 64:2 66:13 72:9 72:22 73:13 82:2 83:19 discretion 23:20 discuss 15:24 discussed 14:19 37:5 87:4 disposition 25:25 26:13 distinction 39:10 distracted 30:9 District 1:1,2 7:10 7:10 80:16 dividing 15:23 division 18:16 32:5 36:13 DLA 3:5 4:15 7:25 8:4 document 7:19 19:15 27:15 28:4 28:10,19 30:25 31:22 34:24 46:10 46:16,22 47:12,15 47:23 48:20 52:10 52:13 68:6 70:19 80:18 87:4,5,6 documents 14:4 16:8 19:8 59:16 82:2,5 doing 55:4 79:2 Dominique 4:7 6:10 8:6 80:9 dosaint@law.nyc... 4:9 due 7:15 duly 9:4 89:8 90:8	Eighth 3:12 either 29:19 33:18 49:25 elevated 60:13,16 email 3:10,16 4:9 42:25 employed 10:24 11:5 employee 44:9 70:3 71:6 74:12 75:2 75:12 76:9 77:2 78:3 employees 16:2,9 16:16,25 19:20,25 36:7 70:10 84:10 84:20 employment 66:14 67:9 encompass 60:25 62:10,19 encompassed 35:20 60:16 enforcement 70:7 78:3,18 79:13,14 enjoy 70:8 ensure 17:23 18:3 24:5 32:2,10 33:15,18,24 50:22 52:14 60:5 entailed 35:15 entails 31:25 entirety 19:15 29:20 50:22 entitled 29:4 environment 46:2 49:21 ERRATA 91:1 escalation 60:2 ESQ 4:14 ESQUIRE 3:9,15 4:7,8 et 1:5,8 7:8,9 91:2,2 Evan 3:15 7:25 evan.north@dla... 3:16 everybody 73:13 exact 68:18	exactly 62:22 EXAMINATION 5:4 9:7 example 26:22,24 34:11 46:9 examples 46:21 47:11,15 48:19 50:5 51:3 exemption 37:15 37:21 38:5,8,20 42:17,18 43:18 44:3,15,21 45:15 45:21 47:17 48:22 49:8,13 50:8 60:23,23,24 exemptions 17:10 17:12 18:21 19:2 19:13 32:15 37:5 46:11 61:3 78:13 83:11 exhibit 4:16 6:4,7,9 27:18 67:22 68:5 68:7,9 80:4,5,8 existing 72:6,21 exonerated 81:11 expires 88:19 89:18 91:24 explain 19:2 65:4 65:19 expressing 70:6 extent 14:10,18,23 20:12 21:14 30:8 34:12 40:9,23 41:17 51:17 57:15 58:22 65:11 66:17 71:16,25 73:2 76:12 77:8,20 78:21 79:19 82:23 83:13 85:20 extra 84:24
<hr/>				
F				
<hr/>				
F 4:7 90:1 facilities 46:3,7 53:25 facility 50:14 factual 29:15 31:3				

31:5,24 Failla 6:11 80:10 fair 15:9 20:22 23:7 35:25 54:3 fairly 10:16 fall 19:13 familiar 9:20 28:9 28:12 68:13 feature 51:19,20 field 42:22 file 26:24 27:2,5 50:21 51:11,14,15 51:16 filed 7:9 files 27:7 49:4,15 50:18 51:5,24 59:20 file-by-file 35:19 52:7 final 18:22 70:24 fine 48:4 72:17 finish 85:8 finishing 43:10 Fire 1:5 7:7 91:2 firm 7:25 25:21,22 first 9:17 15:23,25 29:12 68:25 five 36:16 Florida 2:13,14 89:3,17 90:2 FOIL 6:8 11:10,17 11:18,18 13:3,7 13:17 16:2,3,4,10 16:11,16,17 17:2 17:9,10,17,20,21 17:22 18:19,21 19:2,11 20:14 21:11,22 22:17,25 23:16,19,21 24:2 24:6,21 25:17 30:3,7,13,17 32:6 32:6,15 36:6,9,12 37:6,9,16 38:7,10 44:3 53:4,15,17 53:21,25 54:5,10 54:24 59:14,18 60:24,25 61:3	67:24 69:6,11,14 72:23 73:18 78:2 78:12,12,17 79:11 81:12,14,22 82:2 82:5 83:11 86:13 87:10 FOILs 17:21 FOIL-related 22:5 follow 16:4 29:9,16 31:4 42:13 67:17 71:23 84:3 following 69:24 follows 9:6 31:16 follow-up 86:4 force 72:21 73:18 form 14:20 16:20 19:6 21:3,13 23:10 24:10 25:3 26:16 30:19 35:12 36:18 40:8,23 41:15 46:14 50:10 51:8,25 53:14 56:5,25 61:6 62:4 64:7,21 forth 29:14 31:2 90:8 forward 53:3 forwarded 68:22 FPR 1:24 89:16 90:5,19 frame 72:11 85:3 frequently 17:8 Friday 1:17 front 9:16 34:24 frozen 46:24 fulfill 81:15 full 9:10 full-time 36:10,21 functioning 50:3 functions 26:11 further 42:9 90:11 future 66:14 67:9	general 11:16 13:9 15:22 37:8 46:8 generally 9:19,22 11:20 12:16 24:15 31:5 32:22 generated 18:11,17 18:23 genuinely 86:24 getting 45:4 GG 89:19 GIBSON 4:8 give 8:21 16:7 17:3 26:22 63:16 85:7 given 13:8 16:25 90:10 go 9:15 10:17 17:14 32:5 37:7 43:8 47:25 56:11,12 68:6 76:18 80:20 goes 52:11,13,21 86:8 going 21:13 28:3 38:19 42:8,13,16 59:13 67:14,17 77:4 81:20 83:22 84:3 86:11 good 7:2,24 8:5 9:2 9:9,12 64:5 govern 30:2 33:6 government 6:8 21:25 22:3,4,8,16 22:24 54:3,21 55:2,15 67:23 68:4 70:9 71:20 granted 60:20 Great 9:14 10:23 ground 9:16 guidance 13:8,11 13:13 16:6,15 17:10 20:13,17,17 20:18,20 21:9,20 23:4,5 30:5,14 31:16 guide 16:9 23:20 30:17 guides 23:15	H H 6:1 Hall-Brewet 1:24 2:9 8:15 89:16 90:4,19 hand 8:19 89:10 90:16 handle 57:25 77:25 78:16 handled 35:7 handles 11:18 handling 13:2 29:5 29:10,16 30:3 33:16,17 handy 61:23 happy 15:11 53:16 65:16 72:14 head 11:17 hear 31:12,14 44:25 45:9 47:4,5 47:6,7,8,13 48:16 58:20 75:17,23 heard 11:23 70:21 held 2:9 11:12 29:6 29:11 help 47:20 hereinbefore 90:8 hereunto 90:15 highlighted 29:3 69:2,3 70:25 80:23 hold 12:7	81:12 impair 37:23 implicate 49:8 55:24 implicated 38:8 important 52:12 60:5 impute 70:10 include 22:9 included 51:24 81:10 including 29:18 81:7 incoming 17:9,17 17:21 independently 43:13 indiscernible 60:7 individual 25:18 32:3 33:2 35:3 43:6,12,12,14,17 44:5,16 50:2 52:18,25 59:11 individually 32:24 51:16 individuals 42:3,21 53:24 63:8 inform 26:13 information 14:17 14:18 19:9,14 21:24 23:4,25 29:5,10,17,19 32:5,8,13,16,19 32:21,22,23,25 33:5,7,8,16,17,19 33:24 34:3,5,8,16 42:17 43:2,3,11 43:16 46:5 50:6 51:23 52:15 54:20 62:2 76:20 81:9 81:13,24 informer 46:18 infringe 21:15 40:9 58:23 65:12 71:17 77:20 79:20 85:21 injunction 79:8,11 inmate 26:24 27:3
--	--	---	---	--

27:5,7 44:5 59:20 inmate's 27:2,4 instruct 21:13 42:8 67:14 81:20 83:22 instructed 59:22 instruction 20:9 42:14 instructive 23:6 intend 71:22 intended 70:7 82:14 intent 70:10 interact 28:16 interested 90:14 internal 18:11,15 78:9 Internet 39:4 47:19 interpretation 69:25 introduce 80:3 introduced 68:8 intrusion 86:22 invasion 33:9 37:12 55:10,18,20,25 56:18 57:13,20 70:5 involve 32:14 involves 31:6 issue 64:17,19 issued 22:15,23 23:24 29:11 issues 11:21,21 22:5,6 47:4 57:6 85:5	62:18 63:23 75:7 81:5 <hr/> K keep 20:22 34:5,8 44:17 kind 16:24 know 10:3,5,17 31:15 55:12 70:21 84:25 85:3 knowledge 14:8 15:8,8,17,18 63:24,25 87:2 knowledgeable 14:24 known 14:17 KPF 1:3 KWL 1:3 <hr/> L LA 2:12 laid 19:21 language 70:6 largest 63:22 large-volume 63:9 Laura 1:16 2:8 7:1 7:7 8:1 9:1,3,12 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1,13 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1,23 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1	73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1,17 88:9 89:7 91:3 law 4:3 7:25 8:8 16:11,17 19:11 20:14,20 21:10,21 53:4 68:22 70:7 78:3,17 79:12 80:15 81:25 86:5 87:6 laws 20:13 32:12 lawsuit 79:8 LCR 1:24 89:16 90:4,19 left 36:22 legal 23:8 29:15 31:3,5,24 32:5 34:5,7,9,14 36:10 36:11,13,22,23 53:7 77:14 legislation 20:19 21:7,22 57:5 legislative 11:20,21 legislature 70:6 81:17 82:20 legislature's 81:15 LeMASTER 4:20 7:17 letter 6:9 18:10,23 80:8,14 81:25 letters 53:4 let's 27:15 48:5 67:20 Licensed 2:11 life 37:17 45:23 50:19 51:5 light 71:2 76:9 77:2 85:17 limit 85:12 limitation 34:18 limited 11:22,25 29:18 line 15:23 lines 68:25	listed 31:19 litigation 12:2,4,5 20:23 21:5 little 19:3 21:8 81:2 live 53:24 lives 86:23 living 46:7 LLP 3:5 Ln 91:5 locations 43:4 lodged 17:22 65:6 65:21 long 11:5,12 55:7 55:15 56:19 57:2 64:21 longstanding 69:25 long-winded 55:12 look 27:2,3,15 67:20 68:24 69:2 80:2 looking 41:23,25 Lynelle 4:14 8:11 L-a-u-r-a 9:13 <hr/> M Maginley-Liddie 4:14 8:11 maintained 18:2 19:22,24 63:4 mandate 81:15,17 82:11,19 83:9 mandatory 60:24 78:13 manner 71:5 74:10 74:24 75:10 76:7 76:24 mark 68:4,6 marked 27:22 67:25 80:11 marriage 90:13 Matt 4:15 27:16 matter 7:7 90:14 MATYSTIK 4:15 Mayor 29:12 mean 20:5 32:20 43:9 meant 21:7	Mello 1:16 2:8 7:1 7:7 8:1 9:1,3,9,13 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1,25 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1,5,23 48:1,14 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1,14 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1,18 81:1 82:1 83:1 84:1 85:1 86:1,16 87:1,17 88:9 89:7 91:3 member 27:10 43:24 59:18 mention 32:18 mentioned 17:13 18:25 25:5 36:5 37:4 merely 76:20 77:16 message 39:4 method 50:13 mind 34:10,15,21 minutes 84:24,25 85:8 misconduct 55:9 55:17 misstate 31:18 mistaken 21:7 model 29:4,9,14,20
--	---	--	--	--

29:24 30:2,6,12 30:24 31:2,17 33:5,12,14 35:2 35:22 87:3 modified 20:15 moment 15:3 34:22 moments 28:3 morning 7:3,24 8:5 9:9,12 moving 45:20 multiple 32:25 35:15 63:15 M-e-l-l-o 9:13	45:6,10 46:20 48:5,13 50:16 51:22 52:5 53:16 53:18 56:10 57:7 57:22 59:2 60:11 61:10 62:9 64:11 65:2,14,17 66:5 66:21 67:4,16,20 68:2,12,24 69:4 69:20 70:17 71:21 72:5,13,16,19 73:6 74:2,17 75:3 75:16 76:3,14 77:12,24 78:15 79:3,23 80:2,13 80:20,22,25 81:3 81:22 82:14,17 83:6,17 84:2,13 85:6,13,14 86:2 86:16 87:14 notarized 18:6 39:15,21 59:10 Notary 2:13 88:16 89:17 91:24 note 39:3 notify 59:22 notwithstanding 83:11 number 6:3 7:12 11:20 27:18 67:22 80:8 82:7 numbered 68:8 numbering 28:24 numbers 34:12 42:22,22,23,23,25 NW 3:12 NYCET 42:23	40:7,22 41:6,14 42:6 50:9 51:7,25 53:13 56:4,24 57:14 58:17 61:5 62:3 64:6,20 65:9 65:24 66:16,24 67:11 69:17 70:13 71:15,24 72:10,25 73:21 74:13 75:13 76:10 77:5,17 78:5,20 79:16 81:19 82:22 83:12 83:21 84:11 85:19 obligation 14:23 obligations 82:4 obviously 10:9 Office 8:8 officer 11:11,17 28:14,17,20 32:6 32:7 43:25 44:22 45:16,17 46:22 47:16 48:20 49:14 49:15,19 50:18 58:5 71:4,10,11 71:12 74:10,23 75:10 76:6,24 78:4,18 79:13,15 officers 1:5 7:8 38:11 42:3 49:3 50:15 53:12,21 57:12 58:3,16 59:7 62:8,12,21 63:5,11,15,19,22 64:5 65:7,8,22,23 66:14 67:10 73:20 74:25 78:25 84:8 84:18 91:2 officer's 38:22 official 89:10 Oh 12:4 39:7 okay 7:2 9:19,23 11:8 12:11 15:20 17:13 20:3,8 37:3 39:7,25 40:19 47:14 48:3,14 73:7 75:24 85:6 85:13 86:16 87:14	ongoing 13:16 17:3 Open 6:7 21:25 22:3,4,8,15,23 54:3,20 55:2,15 67:23 68:3 71:20 operates 45:25 opinion 6:7 67:22 68:3,14,17,20 opinions 12:22 22:5,10,15,23 23:3 54:17 opportunities 66:15 67:9 opposed 23:9 52:18 outcome 90:14 outlined 19:11 outset 36:5 outside 53:14 81:21 83:23 86:12	periods 15:22 40:4 permissive 60:24 78:14 permit 42:3 person 9:21 13:13 16:7 17:4 18:5,7,8 33:19 37:18 39:2 44:13 45:23 46:19 50:2,20 51:6 personal 12:21 15:18 33:4 69:7 69:16 70:5 personally 32:23 34:16 personnel 13:3 38:11 49:4,15 50:18 51:5,24 persuasive 23:8,13 pertain 49:19 pertaining 23:24 49:18 63:7 pertains 72:8 Pg 91:5 phone 8:3 16:7 17:5 42:24 pieces 32:25 43:6 43:11 Piper 3:5 4:15 7:25 8:4 place 7:13 44:15 72:7 plaintiffs 1:6 3:3 8:2 planning 86:7 platform 44:19 please 7:21 8:19 9:10 10:3,12 11:15 13:12 17:18 27:17 31:4 32:19 33:11 41:2 45:11 45:13 48:6,24 55:11 58:25 61:20 67:21 68:10 70:18 72:12 74:18 80:3 81:2 point 10:18 police 71:4,10,11
<hr/> N <hr/> N 3:1 5:1 name 7:17 8:6 9:10 9:12 25:17,18,20 27:4,5 33:2 64:5 91:2 names 42:20 61:22 61:23 nature 11:16 17:6 17:10 61:24 necessarily 42:10 67:12 77:6 necessary 82:10 need 10:18 31:13 68:5 negotiations 37:24 new 1:2 3:7,7 4:3,5 4:5 7:11 8:8 11:3 11:6 21:22 23:24 24:24 26:13,25 27:3 54:6 69:6,10 69:14 80:14 nonlaw 79:14 nonuniformed 44:9 North 3:15 5:4 7:24 7:25 9:8 15:2 16:23 19:16 21:4 21:19 23:14 24:19 25:4 26:4,20 27:16,24 28:23 29:2 30:23 31:21 35:17 37:2 40:13 41:3,9,21 42:12	<hr/> O <hr/> oath 9:5,24 89:1 object 46:13 86:12 objecting 41:15 objection 14:20 16:19 19:5 21:2 21:12 23:10 24:9 25:2 26:2,15 30:18 35:11 36:17		<hr/> P <hr/> P 3:1,1 page 5:3 6:3 28:25 68:25 69:23 80:21 pandemic 7:16 paragraph 70:24 Paralegal 4:15 paramount 46:2 part 11:24 19:24 20:2 24:20 participants 7:15 particular 32:15 34:9 37:10,22 46:5 54:24 63:10 82:5 parties 23:25 90:12 party 29:17 part-time 36:11 passage 81:24 passed 20:14,19 passing 20:21 PAUL 3:9 pending 10:20 perform 35:18 period 15:24 36:25 periodically 21:24 22:7 54:19	

<p>policies 6:4 13:2 16:2,14 23:18,23 27:19 28:5 30:16 73:8,12,15 81:23 83:16 84:21 policy 11:20 19:22 29:11 40:5,21 41:5,13 57:24 58:4,10,11,12,13 59:4,9 72:6,21 73:17,23 74:3,4 83:4 POLK 89:4 portion 70:25 80:23 portions 19:12 posed 10:7 position 11:9,13 12:8 13:10,18 56:3,16,20,22 57:9,19 74:6,8,22 75:7 77:14,15,23 82:4,18 83:8 84:7 84:17 85:16,24 possess 34:13 49:2 possessed 17:25 49:20 possession 18:15 81:10 possibility 52:6 possible 45:19 possibly 52:4 potential 18:21 19:2 49:24 50:14 potentially 38:6 43:5 59:15 practice 24:21 36:2 57:25 58:14 59:5 59:13 practices 13:2 81:23 prepare 13:20 15:4 86:21 prepared 12:25 14:13 15:6,15 PRESENT 4:13 previous 24:14,22</p>	<p>25:6,10,15 26:12 27:4,6 68:6 74:19 previously 12:7 48:14 83:2,3 prior 15:24 34:17 35:4 74:7,20 privacy 6:4 13:3 27:19 28:5,14,16 28:20 33:9 37:12 38:19,22 42:16 43:18 44:2,14,21 45:15 55:10,18,20 55:25 56:18 57:13 57:21 69:7,16 70:5 private 81:24 privilege 40:10,24 41:16 42:7 57:15 57:17 58:23 64:13 64:21,23 65:3,13 65:18 66:6,18 67:13 71:17 72:2 73:3 76:13 77:21 78:22 79:18,20 82:24 83:14 85:22 privileged 21:15,18 41:17 42:11 57:3 65:10 67:12 76:11 76:20 77:7 proactive 83:19 probably 85:10,11 problem 10:19 30:11 48:3 proceed 16:6 process 17:8,16,18 17:20 19:4,18,21 29:15 31:3,6,15 31:24 32:14 36:13 79:14 processing 17:9,17 produced 87:7,10 Professional 2:13 prohibition 79:2,6 proper 16:25 21:10 22:16,24 54:23 77:15 properly 32:11</p>	<p>protect 53:11,20,23 protection 6:4 27:19 28:5 70:8 81:23 protections 84:9,19 protocol 29:21 31:17 protocols 6:5 27:20 28:5 29:4,9,14,20 29:24 30:2,6,12 30:25 31:2 33:6 33:12,14 35:3,23 87:4 provide 16:16 23:4 31:23 46:9,21 47:11,14 48:19 50:5 81:8,13 provided 18:24 provision 30:24 provisions 69:6,7 69:11,14,15 public 2:14 33:20 43:19 44:2 55:7 55:16 71:6 74:12 75:12 76:8 77:2 81:9,14 88:16 89:17 91:24 publicly 33:20,21 33:21,23 86:7 pull 26:12 27:16 pulls 28:3</p> <hr/> <p>Q</p> <p>quantity 63:17 question 10:3,5,7 10:20 19:19 22:20 30:9 31:13 37:14 37:20 41:2,10,23 42:10 43:21 45:12 45:13 47:7,10,13 48:15,18 50:25 55:13 58:25 60:14 65:15,16 67:6 72:12,13 73:16 74:16,18,19 76:18 76:21 77:5 82:9 82:16 84:15 86:8</p>	<p>questioning 7:23 questions 13:15 14:7 15:21 79:24 85:7 86:17 quick 10:16 86:3 Quinn 4:8 6:10 8:10 80:9 quirk 44:18</p> <hr/> <p>R</p> <p>R 3:1 90:1 Raise 8:18 rarely 38:12 45:17 60:21 RDR 1:24 89:16 90:4,19 read 45:12,13 70:15 74:18,19 75:20 82:9 84:15 91:5 Reads 91:5 realtime 2:11 21:6 reason 52:6 59:25 91:5 reasonably 17:24 18:13 Rebecca 4:8 6:9 8:10 80:9 recall 35:24 38:7 45:18 receive 17:21 21:9 21:20 34:3 52:23 84:9,19 received 13:16 18:18 22:17,25 26:25 38:9,13 61:12 62:6,17 77:15 87:3 receives 58:7 59:10 78:9,10 recognizing 34:23 record 7:3 9:10 37:10,22 38:21 39:17 45:22 48:2 48:8,12 49:20,23 51:18 52:21,22 57:9 80:17 86:25</p>	<p>87:18 90:9 recording 10:11 records 13:4 17:24 17:25 18:4,7,14 18:15,18 19:12,13 24:18 25:19 27:11 27:13 34:19 35:4 35:16,19 38:10,11 38:25 39:11,13,16 39:18,19,19,22 42:4,5 43:19,23 43:23 44:4,7,8,16 44:22 45:16,18 46:3 49:3,7,18 50:12,17 51:3,4 51:11,12,13,14 52:20 58:5,7 59:9 59:12 60:3,10,15 60:17 61:4,13,17 62:7,18 63:2,4,17 63:18,21 70:8,9 71:3,5 72:9,23 73:19 74:9,11,23 74:25 75:9,11 76:5,8,23,25 78:2 78:10,11,11,17,25 79:12 81:6,18 82:12,21 83:10,19 84:8,18 85:16 86:6 record-by-record 35:10 redaction 17:11 19:15 redactions 18:21 refer 12:15 20:16 reference 24:14 referenced 34:25 references 31:2 referred 87:5 referring 12:17 56:14 79:7 reflects 21:18 regard 13:6,17 33:12 regarding 13:2 20:20 23:19</p>
---	--	--	--	---

Registered 2:10 relate 18:4,8 34:15 49:3 related 32:12 51:12 83:16 90:11 relates 46:22 47:12 47:15 48:20,23 59:21 72:22 81:25 relating 43:11 50:22 58:4,10 63:15 71:3 73:8 73:12 75:9 76:6 76:23 release 18:9 35:4 37:10 39:16,17,18 39:19,22 49:7 65:5,20 67:7 81:18 82:20 85:17 86:7 releasing 78:24 relevant 14:17,19 20:14 26:12 82:6 87:8 relied 43:18 44:20 45:14 remain 56:22 REMOTE 1:15 remotely 2:9 7:15 89:7 repeal 71:2 74:7,20 75:6 76:9 77:2 81:5,16 82:19 83:8,20 85:17,18 repealed 34:18 repeat 22:20 30:9 40:25 45:11 55:11 58:24 74:15 repeated 31:13 rephrase 10:4 15:11 REPORTED 1:23 reporter 2:10,11,11 2:12,13 8:14,16 10:10 74:18 75:20 80:6 82:10 90:5 90:20 represent 7:22	representation 86:9 representative 12:23 represented 86:5 representing 7:18 8:9,15 13:23 reputation 64:4 65:8 reputations 65:22 request 17:21,22 17:23 18:4,6,13 24:7 25:25 26:14 26:19,22,23,25 29:16 32:9,10,16 33:24 34:3 35:6 35:14,15,20 37:9 37:16 38:7 44:21 49:9,14 53:21,25 57:25 58:6 59:17 59:21,22,24 62:13 63:21,23 71:3,5 74:8,11,22 75:8 75:11 76:7 78:2,9 78:10,17 79:12 requested 19:12 25:19 33:19 38:25 63:17 requester 18:5,11 25:17 32:2 34:2 38:25 39:12 63:20 requesters 61:21 requesting 17:25 39:2 requests 11:18 13:3 16:5,10 17:9,17 18:15 22:17,25 23:16,21 24:3,6 24:13,15,17,21,22 24:23,24 25:6,10 25:15 26:13 27:5 27:6 29:5,10 30:3 30:7,13,17 32:4,4 32:7 33:17 36:9 36:12 38:10,14,17 39:11 45:15,17 54:11 58:5,8,10	59:14,15,19,20,23 60:2,12,15,19,22 61:4,12,25 62:7 62:10,17,19,23,25 63:3,10 72:23 73:19 76:5,22,25 84:22 86:14 87:10 require 35:3 39:14 39:15 required 35:22 requirement 53:8 60:6 83:9 requirements 34:5 34:8,10,14 requires 69:25 77:6 respect 49:18 63:14 64:18 respond 24:24 30:7 30:13 50:15 54:10 67:12 76:12 responded 24:13 38:16 responding 16:4,10 23:21 24:2,21 36:9 37:8,15 53:21,25 59:14 73:18 84:22 responds 23:16 response 18:23,24 30:17 35:15 51:20 57:16 64:22 72:23 75:18 83:20 responses 11:19 24:16,23 25:11,15 responsibilities 11:16 responsibility 14:7 14:16 53:11,20,23 responsible 36:8 responsive 59:15 responsiveness 18:20 retrieve 25:10 retroactively 68:5 reveal 42:11 77:9 revealed 46:17 review 14:4 17:8,16	18:22 21:22,24 22:7,9,9 24:22 33:23 35:19 44:15 46:3 51:16 52:7 52:10,12,21,23 54:19 59:23 68:16 73:24 74:4 76:2 77:11,23 79:22 83:5 84:22 85:24 reviewed 17:23 18:19 19:9 31:17 32:9,9 33:14 49:23 50:21,23 59:18 71:4 74:10 74:23 75:10 76:7 76:24 reviewing 16:4 36:8 57:5 59:14 70:19 73:5,11,15 83:16 reviews 78:11 revised 20:8 revision 20:21 86:10 Rhonda 1:24 2:9 8:15 89:16 90:4 90:19 right 8:19 27:8 34:2 39:23 rights 38:23 risk 46:6 role 22:3 routinely 28:19 royal 56:14 rquinn@law.nyc... 4:10 rules 9:16 16:2	53:11,20,23 Saint-Fort 4:7 6:10 8:5,6 14:20 16:19 19:5 21:2,12 23:10 24:9 25:2 26:2,15 30:18 31:12 35:11 36:17 40:7,22 41:6,14 42:6 44:23 45:3,8 46:13 48:4 50:9 51:7,25 53:13 56:4,24 57:14 58:17,21 61:5 62:3 64:6,20 65:9 65:24 66:16,24 67:11 69:17 70:13 71:15,24 72:10,15 72:18,24 73:21 74:13 75:13,15,19 75:24 76:10 77:4 77:17,19 78:5,7 78:20 79:16,18 80:10 81:19 82:8 82:22 83:12,21 84:11,23 85:10,19 86:11 87:2,12 saying 39:4 says 21:5 29:8 69:5 69:24 scope 53:14 54:5 81:21 82:13 83:23 86:12 screen 28:2 30:25 39:4 scroll 28:23 seal 89:10 search 25:14,16,17 25:18,20,23,24 26:10 27:6,12,14 second 26:6 30:10 69:3 80:21 Section 29:4 60:18 69:8 71:2 secure 45:25 49:21 security 34:12 46:6 49:24,25 50:3,14 50:23 51:18,20,20
--	---	---	---	---

<p>see 21:5 27:4 28:7 29:8 69:5 71:7 80:24 81:4 seen 63:23 80:17,17 83:2 senior 11:10,19 sense 39:13 63:16 sentence 11:24 69:24 70:12 71:12 83:2 separate 61:2 separately 81:7 service 27:10 43:24 set 29:14 31:2 90:8 90:15 setup 36:21 seven 11:7,14 20:9 68:25 SHEET 91:1 shorthand 90:5,20 showed 68:7 showing 28:4 sic 20:23 Signature 91:19 signed 18:7 81:5 single 35:20 slightly 41:10,22 67:5 slowly 10:13 small 11:17 36:6 social 34:12 solemnly 8:20 solution 47:22 somewhat 63:12 sorry 11:23 20:5 22:19 26:5 30:8 31:9 39:3,8 43:9 44:17,23 45:6 56:11 60:9 69:21 72:15 73:10 75:17 sought 18:14 54:22 62:2 source 20:17,18 sources 21:21 Southern 1:2 7:10 span 20:11 speak 10:12,12</p>	<p>13:25 23:8 34:7 speaking 38:2 39:11 specific 27:2 37:5 38:8 49:14 51:3,4 63:7,10 82:9 specifically 31:17 32:6 33:15 43:12 55:22 specify 62:23 72:11 spell 9:11 spoke 13:22 15:4 54:2 staff 59:18 staffing 36:15 standard 7:5 59:19 start 60:14 state 2:14 7:21 9:10 83:9 89:3,17 90:2 stated 83:4 statement 69:14 71:13 states 1:1 7:10 70:25 80:15,24 81:4 statewide 54:4 static 31:11 stays 54:16 STENOGRAPH... 8:18,25 31:8 60:8 75:22 stenographic 90:5 90:20 stepping 44:18 steps 31:19,19 stored 25:6 Street 3:12 4:4 strike 74:6 79:6 subject 25:16 26:18 26:21,23 27:8,11 27:13 39:12,16,22 64:14 76:17 81:12 86:9 submitted 25:21 Subscribed 88:12 91:20 substance 41:24</p>	<p>76:16,19 substitute 71:11 support 13:17 16:16 sure 22:21 34:4 43:20 48:25 55:12 68:18 86:21 suspended 74:3 swear 8:17,20 sworn 9:4 88:12 89:8 90:8 91:20</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 6:1 90:1,1 Tab 27:17 67:20 80:3 take 10:18,19 27:15 44:15 52:17 87:12 taken 43:5 46:19 48:9 51:21 72:8 talk 40:3 talking 34:17 team 16:3 17:18 47:22 tech 7:19 47:21,23 technical 48:3 85:5 TECHNICIAN 4:16 tell 9:4,16 15:25 21:8 36:6 64:13 ten 63:19,22 tend 43:14,17,24 44:4,8 testified 9:5 25:9 54:8,15 61:11 87:9 testify 12:12,21,25 14:16,23 15:6,13 15:15 testifying 9:24 testimony 8:21 54:12,18 90:10 text 71:7 81:2 thank 8:13 9:2,14 12:6 15:20 26:8 37:3 40:19 43:15 44:17 57:23 70:22</p>	<p>70:22 72:18 86:19 86:20,23 87:14 things 17:14 26:9 think 15:3 39:7 47:3,25 54:8,15 61:11 84:24 85:11 86:14 third 23:25 29:17 third-party 29:5,10 32:4 threaten 37:17 time 7:5,5 13:9 15:22 36:25 40:4 72:11 84:24 85:3 85:4,12,12 86:19 86:20 87:17 TN 2:12 today 8:3,14 9:24 10:10 12:11,25 14:7 15:21 72:21 78:2 79:25 86:18 86:19 87:5,11 today's 7:4 13:21 87:17 topic 14:9,19 15:17 53:15 81:21,22 82:6,13 83:24 86:13 trained 13:6 19:20 training 13:17 16:24 17:4,7 19:25 20:2,9,24 TRANSCRIPT 91:1 TransPerfect 7:18 8:16 treat 79:11 treatment 24:6 33:6 true 90:9 truth 8:22,22,23 9:5 try 10:4 47:10,18 two 15:22 36:10 40:4 types 24:17 42:17 43:2,23 44:7 51:3</p>	<p>51:4,10,13 62:2 typically 26:12</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>undersigned 89:6 understand 9:23 10:2 12:20 14:6 14:15,22 15:10 18:12 19:17,21 24:13 40:4 43:20 49:12 51:9 62:5 79:4 understanding 22:2 71:9 understands 71:19 understood 10:6 unfounded 55:8,17 55:23 57:11 58:2 58:15 59:6 62:11 64:3 66:11 67:8 70:3 81:11 Uniformed 1:5 7:7 91:2 unit 11:18 16:25 18:19 36:6 59:18 United 1:1 7:9 80:15 units 18:16 unreasonable 37:11 unstable 39:5 45:5 unsubstantiated 55:8,16,23 57:11 58:2,15 59:6 62:11,20,24 64:3 65:6,20 66:11 67:7 70:2 81:10 unwarranted 33:8 33:25 37:12 55:10 55:18,19 56:17 57:13,20 70:4 unwelcome 86:22 unwritten 58:11,12 58:13 59:4 update 20:24 use 16:9,11,12 22:14,22 23:3,5</p>
--	--	--	--	--

26:12 28:19 30:6 30:12,16 47:19 uses 23:20 24:2	withheld 19:10,10 19:14 42:18,20,21 42:23,24,25 43:3 46:10 withhold 46:11,25 47:17 48:21 82:4 withholding 17:11 witness 8:17,24 14:22 16:22 19:8 21:13,17 23:12 24:12 26:18 30:21 31:10,14 35:14 36:20 40:8,11,23 40:25 41:7,16,19 42:7 44:25 45:4,7 46:16 50:12 51:10 52:3 56:8 57:4,18 58:19,24 60:10 61:8 62:6 64:9,24 66:3,19 67:2,14 69:19 70:15 71:18 72:3 73:4,23 74:15,20 75:14,25 77:10,18,22 78:6 78:8,23 79:17,21 81:20 82:3,25 83:15,22 85:23 87:8 89:10 90:7 90:10,15 word 60:9 62:24 work 9:20 10:21 11:19 16:3 36:12 43:4,4 49:16,21 53:24 working 46:6 works 17:19 19:4 wouldn't 62:22 written 15:25 16:8 16:11,14,15 19:22 30:16 wrong 68:11 80:7	years 11:7,14 20:9 36:16 yesterday 63:25 yes-or-no 76:21 York 1:2 3:7,7 4:3 4:5,5 7:11 8:8 11:3,6 23:24 54:6 80:14	26 27:17 27 6:4 28094 1:25
V	Z	3	
V 91:2 verbal 13:14 verbally 16:7 17:4 versus 7:8 video 7:6 85:3 videoconference 7:14 videographer 4:19 7:2,18 8:13 10:11 48:7,11 87:16 Videotaped 1:15 2:8 view 22:19 views 49:13 54:9,23 82:15 violate 32:12 34:4 visitor 44:10,12 volume 63:17,18 vs 1:7	Zoom 38:24 73:8	3 6:9 80:5,8 30(b)(6) 15:12 335-4500 3:8 356-2444 4:6 360849 89:19	
W	1	4	
walk 49:11 want 9:15 15:5,14 17:14 19:20 31:18 39:3 40:4,14 70:15 85:2 86:25 wanted 39:5 Washington 3:13 wasn't 65:14 way 33:25 36:8 61:25 90:13 ways 81:8 web 7:14 website 21:25 22:8 54:21 week 68:19 87:7 went 36:22,24 we'll 15:23 69:2 87:12 we're 34:17 48:7,11 85:11 we've 37:4 WHEREOF 90:15	1 6:4 27:18 1.5.5 29:4 1/28/19 6:5 27:20 1:20-CV-05441 1:3 1:20-cv-05441-K... 7:12 10:23 48:8,9 10:27 48:10,12 100 4:4 10007 4:5 10020 3:7 11:14 87:18,19 12 61:13 81:5 12th 15:22,24 38:14 61:17 62:18 63:23 75:7 1251 3:6 14 67:20 1954 28:25 19775 6:8 67:24 1981 6:6 27:22	4 82:7	
	2	5	
	2 6:7 67:22 68:9,25 69:23 20004 3:13 2017 29:12 202 3:14 2020 1:17 2:4 7:4 15:23 38:14 61:13 61:18 75:7 80:16 81:5 88:13 89:11 90:16 91:3,21 212 3:8 4:6 25 80:16	5 80:3 50-a 34:18 60:4,13 60:18 61:3 71:2 74:7,21 75:5,5,6 76:9 77:3 81:17 82:11,19 83:8,20 85:17,18 500 3:12	
		6	
		67 6:7	
		7	
		7 1:17 2:4 91:3 7th 7:4 7/25/20 6:11 80:11 7/27/20 6:8 67:24 799-4000 3:14	
		8	
		80 6:9 87(2)(b) 69:8,16	
		9	
		9 5:4 9th 89:11 90:16 9/28/23 89:18 9:31 2:5 7:5 90 84:25	